No. 2703

United States

Circuit Court of Appeals

For the Ninth Circuit.

J. L. ALVERSON,

Plaintiff in Error,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Eastern District of Washington, Northern Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

Index.

Names and Addresses of Attorneys of Record.

PLUMMER & LAVIN, 1202 Old National Bank Building, Spokane, Washington and

O. C. MOORE, 501 Peyton Building, Spokane, Washington,

Attorneys for Plaintiff and Plaintiff in Error.

and

HAMBLEN & GILBERT, 804 Paulsen Building, Spokane, Washington, and

A. C. SPENCER, Wells-Fargo Building, Portland, Oregon,

Attorneys for Defendant and Defendant in Error. [1*]

In the Superior Court of the State of Washington in and for the County of Spokane.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation, and J. A. CAUGHREN, CARLOS N. BOYNTON, H. W. CHURCH, S. A. McCOY and MARTIN WOLDSON, Copartners Doing Business Under the Firm Name and Style of CAUGHREN, BOYNTON & COMPANY,

Defendants.

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*Page-number appearing at foot of page of original certified Record.

Complaint.

Plaintiff complains of defendants and for cause of action alleges:

I.

That the Oregon-Washington Railroad & Navigation Company is now, and was at all times herein mentioned, a corporation created, organized and existing under and by virtue of the laws of the State of Oregon, and engaged in the construction of a certain line of railroad between and within the city of Spokane, Washington, and a place known as Ayer Junction, including the construction of bridges, cuts, fills, concrete abutments and other structures necessary to be constructed for the purpose of building and completing the line of railroad.

II.

That the individual names of the above-named defendants are now, and were at all times herein mentioned, a copartnership, and said parties were at all times herein mentioned doing business as a copartnership under the firm name and style of Caughren, Boynton & Company.

III.

That for the purpose of constructing said line of railroad and the necessary structures incident thereto said Oregon-Washington Railroad & Navigation Company, defendant herein, entered into a contract **[2]** to and with said Caughren, Boynton & Company, wherein and whereby said Caughren, Boynton & Company agreed to build and construct all concrete abutments, foundations, piers, pedestals and culverts to be constructed on said line

of railroad by said railroad company between the eastern limits, to wit: Post Street in the city of Spokane, State of Washington, and the Hangman Creek and Spokane River Bridge, which contract is now in the possession of the above-named defendant, to which reference is hereby made for greater particularity.

IV.

That thereafter said Caughren, Boynton & Company sublet said contract to J. L. Alverson and L. L. Koeper, copartners of Spokane, Washington, a copy of which contract is hereto attached and marked exhibit "A."

V.

That thereafter, on, to wit, the 23d day of January, 1912, by mutual agreement of the parties, and for the purpose of transferring all of the rights in and to said contract of Alverson *and* Koeper, to this plaintiff, an agreement was entered into between Alverson & Koeper and Caughren, Boynton & Company, and thereafter the copartnership of Alverson & Koeper was dissolved, which agreement, both as to the contract and as to the dissolution of the copartnership, is hereto attached and marked exhibits "B" and "C."

VI.

That said defendants at all times knew of the contracts hereinbefore referred to and acquiesced in all of them.

VII.

That thereafter Caughren, Boynton & Company and this plaintiff entered into an agreement wherein and whereby the said plaintiff herein agreed to carry

out and perform the contract which had previously been entered into between Caughren, Boynton & Company and Alverson & Koeper, and said contract was reinstated in so far as [3] this plaintiff was concerned in all its particulars, and thereafter plaintiff commenced performing said work and furnishing the materials therein mentioned, and purchased a large amount of equipment in preparing to perform said contract, which reinstatement contract is hereto attached and marked exhibit "D."

VIII.

That plaintiff has always been ready, able and willing to perform said contracts, and do and perform all the matters therein mentioned and furnish all of the materials and equipment necessary therefor, and so advised the officers of said defendants, and frequently requested defendants to inform him, the plaintiff, when they were ready for him to go to work and perform said contract. That the plaintiff could not proceed with the performance of said contract until notified so to do by the officers and agents of said defendants, and waited a number of months patiently for said notification and for said defendants to have matters and things so prepared so that plaintiff could go ahead with the work.

IX.

That after plaintiff had entered into the contracts hereinbefore mentioned, and after he had peformed part of said work, said defendants, among themselves, entered into a contract, a copy of which is hereto attached and marked exhibit "E," which said contract was made on behalf of said defendant, Caughren, Boynton & Company, and also on behalf

of this plaintiff, who was at the time the only subcontractor under Caughren, Boynton & Company, for the performance of any of said work, and said contract contains the following clause:

> "In event that the railroad company does not elect, within thirty days from the date hereof, to have the contractor complete the structures, the construction of which have not at this date been commenced, then and in that event the railroad company shall assume all obligations of the contractor to the party or parties holding subcontracts for the construction thereof, and said arbitrators shall determine the amount of profit which the contractor might reasonably have made upon said portions of said work, and make an award thereof, which shall be paid by the said railroad [4] company in consideration of the cancellation of said contract as to said work."

X.

That thereafter the said railroad company did not elect, within thirty days from the date of said last-mentioned contract, to have the contractor complete the structures which at that time had been commenced, but thereafter entered into a contract with other contractors who had no connection whatsoever with this plaintiff or with Caughren, Boynton & Company, to perform all of said work and furnish all the materials which were contained in the contract heretofore entered into between the defendants and between Caughren, Boynton & Company and this plaintiff, and refused, failed and neglected to permit this plaintiff to go ahead with said

work and complete the same.

XI.

That the amount of the cement work which under said contract this plaintiff had a right to perform and furnish the materials for between the points mentioned, to wit: Post Street in the city of Spokane, and the confluence of Hangman Creek (now Latah Creek) and the Spokane River, would be approximately twenty-five thousand (25,000) yards, upon which plaintiff would have realized a profit of seventy-one thousand, seven hundred and fifty dollars ($71,750).

XII.

That defendants have failed, neglected and refused to permit plaintiff to perform said contract and have by their agreements and stipulations, acts and doings, taken the matter wholly out of plaintiff's hands and have not in any manner adjusted or settled the loss sustained by plaintiff by reason of the violation of said contracts by defendants and each of them, and said work has now been completed by other contractors, and by reason of the breach of contracts on the part of defendants and the wrongs committed by them as herein mentioned, and by reason of the loss of **[5]** profits which would have been realized and received by plaintiff had he been permitted to carry out said contract and was prevented by reason of the acts and doings of said defendants, plaintiff has been damaged in the sum of seventy-one thousand, seven hundred and fifty dollars ($71,750.00), no part of which has been paid.

WHEREFORE, plaintiff demands judgment against the above-named defendants, and each of

them, for the sum of seventy-one thousand, seven hundred and fifty dollars ($71,750), and his costs and disbursements herein.

(Signed) PLUMMER & LAVIN,
Attorneys for Plaintiff.

State of Washington,
County of Spokane,—ss.

J. L. Alverson, being first duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has read the foregoing complaint, knows the contents thereof, and that the same is true, as he verily believes.

(Signed) J. L. ALVERSON.

Subscribed and sworn to before me this 10th day of July, 1914.

(Signed) GERTRUDE KENDRICK,
Notary Public in and for the State of Washington,
Residing at Spokane. **[6]**

Exhibit "A" [to Complaint—Memorandum of Agreement, etc.].

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, THIRD DISTRICT.

Memorandum of Agreement.

THIS AGREEMENT, made this ..... day of ....., one thousand nine hundred and eleven, by and between Caughren, Boynton & Company, of Spokane, Wash., a copartnership, party of the first part, hereinafter designated, also, as the "Railroad Company," and J. L. Alverson and L. L. Koeper of Spokane, Wash., known as Alverson & Koeper, a copartnership, party of the second part, hereinafter

designated, also, as the "Contractors," Witnesseth:

That the Contractors, for and in consideration of the covenants, stipulations and agreements to and with the Railroad Company, as hereinafter mentioned, promises and agrees to execute, construct and finish in every respect, in the most substantial and workmanlike manner, and to the satisfaction and acceptance of the Chief Engineer of the Railroad Company's Third District, all the following work, to wit: All of the proposed work as specified below, between Hangman and Spokane River Bridge (not including this bridge) to the eastern limits of contract, all in the State of Washington.

Also culverts sta. 647, 664, 700, 734, 739, 838.

The Contractor agrees to commence work in 10 days from the date of this instrument, and to prosecute the same with such force and means as will in the opinion of said Chief Engineer insure the completion of the same on or before .....; said work to be subject at all times to the inspection of said Chief Engineer, and to conform to the rules and general specifications included herein and made a part of this agreement, and to the following general covenants:

1. Where the work "Engineer" is used in this instrument [7] it shall be understood to refer to the Chief Engineer of the Railroad Company's Third District, and it is expressly agreed that the powers and authority herein conferred upon him shall in no degree extend to his assistants, unless he shall specifically delegate the same in writing.

2. The Contractor, for the consideration herein-

after provided, hereby agrees not to assign or transfer this contract, or re-let any of said work, in whole or in part, without the written consent of the Railroad Company, or the Engineer, but shall constantly prosecute said work in person.

3. It is mutually agreed between said parties, that to prevent or settle all disputes and misunderstandings between them in relation to any of the stipulations contained in this agreement, or their performance by either of said parties, that the Engineer shall be, and hereby is made, an Umpire to decide all matters arising or growing out of this contract.

4. It is further understood and agreed that if the Contractor, in the opinion of the Engineer (communicated in writing by the Engineer to the Contractor) shall fail or refuse to comply with any of the stipulations contained in this contract to be performed by the Contractor, or shall at any time neglect or refuse to prosecute the work with a sufficient force, to insure the completion of the work within the time specified herein, then the Railroad Company may, at its option, after the expiration of 10 days from the mailing of such notice to the Contractor at his Post Office address, cancel this contract and declare the same void, and a notice in writing mailed to the Contractor at his Post Office address, signed by the Railroad Company, shall be sufficient for that purpose. In the event the contract is cancelled as herein provided, the Contractor shall have no claim whatever against the Railroad Company for damages, and all compensation or percentage

unpaid to the Contractor under the provisions of this contract [8] shall be retained by the Railroad Company, together with any material then on the ground belonging to the Contractor, to indemnify it from any loss by reason of the default of the Contractor, and the Railroad Company may, at its option, employ other parties to complete said work or any part thereof, and any loss occasioned by reason of such default to be chargeable against the Contractor, the amount of such loss to be estimated by the Engineer, whose decision shall be final and binding on the parties hereto.

5. It is further agreed that whenever, in the opinion of the Railroad Company, it may be necessary in order to secure the payment of wages of laborers employed by the Contractor, or the payment of material men, the Railroad Company is hereby authorized to pay the amounts due them and deduct the same, attested by the receipts of such laborers and material men, from any sum which may be payable to the Contractor.

6. It is agreed between said parties, that if in the opinion of the Railroad Company it may be for any reason necessary to stop any or all of said work, or to diminish the force employed, the Railroad Company shall have the right to do so, and the Contractor, in that event, shall have no claim for damages, but shall immediately stop the work or diminish the force, as the Railroad Company may direct.

7. It is further agreed that the Contractor shall not be entitled to any damages occasioned by delay in the performance of the work by any other Con-

tractor adjoining the work herein contracted or for delays in securing rights-of-ways.

8. It is further agreed that when any work under this agreemnt shall be done by the Contractor at the request of the Engineer, and for which no price is specified, the Contractor shall be entitled to a price to be fixed and determined by the Engineer.

9. It is further agreed that if the Contractor shall execute any part of said work defectively and if such imperfection [9] shall not be of sufficient magnitude to require, in the opinion of the Engineer, the taking up and rebuilding of such imperfect part, the Engineer shall have power, and he is hereby authorized to make any deduction by him deemed proper, from the stipulated price for such work, on account of the defective part.

10. It is further agreed and expressly understood, that the decision of the Engineer, on any point or matter touching this agreement, shall be final and conclusive between the parties hereto, and each and every of said parties hereby waives any and all right of action, suit or suits, or other remedy, in law or equity, under this contract, involving decisions made or to be made by the Engineer.

11. It is further agreed between the parties hereto that in the performance of the work herein contracted, the Contractor shall be solely liable for any and all injury or damage to persons or property caused by negligence, including the acts of agents, servants and employees, and the Contractor shall and will indemnify and save harmless the Railroad Company from any and all loss, costs or expense on

account of any such injury or damage.

12. It is further agreed that the Contractor shall deduct from each employee's wages engaged upon the work covered by this contract the usual monthly hospital fee, as established by the Railroad Company's rules covering hospital service and regulations; and that such hospital fees are to be remitted promptly at the close of each month to the Assistant Treasurer of the Railroad Company at Portland, Oregon, and to send a statement showing the number of employees employed for such month upon the work covered by this contract, to the Engineer.

Monthly payments on account of this work will be made as follows: On or about the 15th day of every month, ninety per cent (90%) of the amount due for all work done during the previous month, as shown by estimates of the Engineer made to the Railroad **[10]** Company, will be paid; and it is agreed between said parties that the Railroad Company shall have the right to retain ten per centum (10%) of each and every estimate made by the Engineer on said work until the whole has been entirely finished and completed to the satisfaction and acceptance of the Engineer, and he shall have furnished a certificate thereof to the Railroad Company.

It is further agreed between said parties that the Contractor shall be paid in the manner above stated, only for the actual work done and materials furnished.

The Contractor agrees to furnish, execute and deliver to the Railroad Company a good and sufficient

bond, satisfactory to it, in the sum of twenty-five per centum (25%) of the estimated amount of this contract, conditioned upon the faithful and satisfactory execution thereof in accordance with all of its terms; said bond to indemnify the Railroad Company against all claims for material furnished and labor performed, and against any and all other liabilities and any danger or loss by reason of the nonperformance of this contract, and said bond to be further conditioned as provided by Section 1129 of Remington and Ballinger's Statutes of the State of Washington, or any amendments thereof.

Changes or alterations may be made in the terms and conditions of this agreement upon the written consent of the parties hereto. Such changes or alterations to become effective must be endorsed upon the original contract and be witnessed by the signatures of two or more disinterested parties.

In consideration of the above Caughren, Boynton & Company agree to pay the following prices:

Dry Earth Excavation, per cubic yard.....	.40
Dry Loose Rock Excavation, per cubic yard..	.58
Dry Solid Rock Excavation, per cubic yard..	1.10
Wet Earth Excavation, per cubic yard with hand pump	.85
Wet Earth Excavation, per cubic yard with steam pump.....	1.30
Wet Lose Rock Excavation, per cubic yard with hand pump.....	1.30
Wet Loose Rock Excavation, per cubic yard with steam pump.....	1.95
Wet Solid Rock Excavation, per cubic yard with hand pump.....	2.00

Wet Solid Rock Excavation, per cubic yard with steam pump	3.50

[11]

Back Filling, per cubic yard	.20
Timber and plank for sheet piling and bracing for excavation, per M. ft. B. M.	26.00
Foundation piles in place (ordered lengths) per lin. ft.	.30
Hauling concrete and reinforcing material, per ton per mile, one mile free haul	.40
Hauling timber, per M. per mile, one mile free haul	.70
Hauling piles, per Lin. ft. per mile, one mile free haul	.00¾
Reinforcing rods, furnishing and placing, per lb	.03⅞
Plain concrete 1, 3 & 6, per cubic yard	6.30
Plain concrete 1, 3 & 5, " " "	6.90
Reinforced concrete, 1, 2 & 4, per cubic yard.	10.40

IN WITNESS WHEREOF, the said parties hereto have signed this agreement at Spokane, Wash., the day and year first above written.

(Signed) CAUGHREN, BOYNTON & COMPANY,

By SAM'L A. McCOY.

ALVERSON & KOEPER,

J. L. ALVERSON,

L. L. KOEPER.

W. W. MITCHELL.

L. MOREL. [12]

THE NORTH COAST RAILROAD COMPANY.

SPECIFICATIONS.

Cement and Cement Tests.

Definition.

1. The cement for all structures must be high grade Portland Cement, unless otherwise specifically specified. By the term "Portland Cement" is meant the product obtained by grinding to a fine powder the clinker resulting from the calcination to incipient fusion of an intimate mixture of properly proportioned argillaceous and calcareous materials, to which no addition greater than 3 per cent. has been made subsequent to calcination.

Composition.

2. The cement must be of normal composition for the brand supplied. It must not contain more than 1.75 per cent. of sulphuric anhydride (SO), nor more than 3 per cent. of magnesia (MGO). The cement must not be adulterated with furnace slag, natural cement, limestone, or hydraulic lime. The question of adulteration may be determined either by chemical analysis or by inspection of the process at the factory.

Weight per Barrel or Sack.

3. The average weight per barrel must not be less than 376 pounds net, and that per sack not less than 94 pounds net. If the weight, as determined by test weighings, is found below 376 pounds per barrel, the contractor will be required to supply, free of cost, an additional amount of cement equal to the estimated shortage.

Delivery in Good Condition.

4. The cement must be delivered in good condition, and any package that is broken may be rejected or accepted as a fractional package at the option of [13] the Engineer.

Sampling.

5. Samples of cement will be taken from individual packages in such a manner as to secure fair average samples of each package sampled. It will usually be considered sufficient if a sample is obtained from each five barrels, or each ten sacks, although such additional samples may be taken as the Engineer may deem necessary to determine quality beyond a question. Where the results of tests indicate unusual variations from the normal characteristics of the cement, this will be considered good cause for rejection. The engineer may, at his option, permit samples to be taken from cement in bulk in bins, the cement afterward being held until the results of tests determine the quality of the cement sampled.

Specific Gravity.

6. The specific gravity of the cement, thoroughly dried at 100 degrees Centigrade, shall be not less than 3.10.

7. The cement must leave a residue of more than 8 per cent. by weight on the standard No. 100 sieve, and a residue of not more than 25 per cent. on the standard No. 200 sieve.

Time of Setting.

8. The cement, when made into paste of normal consistency, must develop initial set in not less than

30 minutes and must acquire final set in not less than one hour nor in more than ten hours.

Soundings.

9. Pats of neat cement paste will be made, of normal consistency, and molded on glass plates. They will be about 3 inches in diameter, one-half inch thick at the center, tapering to a thin edge, and will be kept in moist air for a period of twenty-four **[14]** hours.

(a) A pat will then be kept in air at normal temperature and observed at intervals for at least 28 days.

(b) Another pat will be kept in water maintained as near 70 degrees Fahrenheit as practicable, and observed at intervals for at least 28 days.

(c) A third pat will be put into water, the temperature of which is to be raised to the boiling point and kept at that point for six hours.

These pats must remain firm and hard and show no signs of distortion, checking, cracking or disintegrating.

Making Briquettes.

10. In making neat briquettes, cement pats of normal consistency will be thoroughly mixed with a trowel and kneaded into the molds with a blunt stick, or a plunger. In making mortar briquettes about one-half as much water as is used for near briquettes will be used, and the proportions will be one part by weight of cement to three parts of standard sand.

Tensil Strength.

11. The neat briquettes, prepared as specified above, shall stand a minimum *tensil* stress per square inch as follows:

For one day in air and six days in water.....450 lbs.

For one day in air and twenty-seven days in water.....550 lbs.

The mortar briquettes, prepared as specified above, shall stand a minimum *tensil* stress per square inch as follows:

For one day in air and six days in water .....150 lbs.

For one day in air and twenty-seven days in water.....225 lbs.

The average of the twenty-eight day briquette tests must always be higher than that of the seven day tests. [15]

Rejections.

12. A cement will be rejected that fails to meet any of the above requirements.

Laboratory Practice.

13. The standard sieves, Vicat needle and standard sand and the terms "normal consistency," "initial set," "final set," referred to and used in these specifications are those recommended and defined by the Committee on Uniform Tests of Cement, of the American Society of Civil Engineers in its progress report presented at the annual meeting, January 21, 1903, and amended at the annual meeting, January 20, 1904. The methods followed in the laboratory will, in general, conform to those recommended by that committee. [16]

THE NORTH COAST RAILROAD COMPANY.

Concrete Masonary Specications.

CONCRETE MASONRY. Concrete may be constructed with broken stone or gravel.

The stone shall be sound, durable limestone, or other hard stone acceptable to the Engineer, which in place in the quarry shall ring under the hammer. It shall be crusher run, with all dust removed, and broken to pass in any direction through a one and one-half inch ring.

The gravel shall be composed of clean pebbles of hard and durable stone of such size that any piece will pass through a one and one-half inch ring, free from clay and other impurities except sand. When containing same the amount per unit of volume of gravel shall be determined accurately to admit of the proper proportion of sand being maintained in the concrete mixture.

Concrete shall be made of three classes. The Contractor will make separate prices for each.

Class A concrete shall be composed of: 1 part of cement, 2 parts of sand, 4 parts of stone or gravel. This class will be used only in reinforced concrete work in certain parts of thin walls and arches.

Class B concrete shall be composed of: 1 part of cement, 2½ parts of sand, 5 parts of stone or gravel. This class will generally be used for arches, piers, reinforced concrete, and tunnel linings.

Class C concrete shall be composed of: 1 part of cement, 3 parts of sand, 6 parts of stone or gravel. This class will be used in foundations, abutments, retaining walls and heavy work generally.

The cement, sand and stone shall each be measured loose.

Where the volume of concrete to be placed at any one point exceeds one hundred cubic yards, the concrete shall be mixed at that point by a machine batch mixer approved by the Engineer. Continuous mixers will not be allowed.

Where the volume of concrete to be placed at any one point is less than one hundred cubic yards, the concrete may be mixed by hand, in which case: (1) Tight platforms shall be provided of sufficient size to accommodate men and materials for the progressive and rapid mixing of at least two batches of concrete at the same time. Batches shall not exceed one cubic yard each, and smaller batches are preferable, based upon a multiple of the number of sacks to the barrel.

(2) Spread the sand evenly upon the platform, then the cement upon the sand and mix thoroughly until of an even color. Add all the water necessary to make a thin mortar and spread again; add the gravel or the broken stone, which, if dry, should first be thoroughly wet down. Turn the mass with shovels until thoroughly incorporated, and all the gravel or stone is covered with mortar; this will require the mass to be turned on the mixing board not less than four times.

(3) Another approved method, which may be permitted at the option of the Engineer, is to spread the sand, then the cement, and mix dry; then the gravel or broken stone; add water and mix thoroughly as above.

The concrete shall be of such consistency that when dumped in place it will not require much tamping. It shall be spaded down and tamped sufficiently to level off, after which the water should rise freely to the surface. [17]

Forms shall be well built, substantial and unyielding, properly braced or tied together by means of wire or rods, and shall conform to lines given.

For all important work the material used shall be dressed matched lumber, sound and free from loose knots, secured to the studding or uprights in horizontal lines.

For backing and other rough work undressed lumber may be used. In foundations the pits shall be sheeted up with undressed lumber to keep the concrete clean.

Where corners of the masonry and other projections liable to injury occur, suitable mouldings shall be placed in the angles of the forms to round or bevel them off.

Planking once used in forms shall be cleaned before being used again.

The forms must not be removed within seventy-two hours after all the concrete in that section has been placed. Forms supporting arches shall not be removed under fourteen days from time of completion of the arch. In freezing weather the forms must remain until the concrete has had a sufficient time to become thoroughly set.

In dry but not freezing weather, the forms shall be drenched with water before the concrete is placed against them.

Each layer should be left somewhat rough to insure bonding with the next layer above; and, if it be already set, shall be thoroughly cleaned and scrubbed with coarse brushes and water and flushed with cement grout before the next layer is placed upon it.

Concrete shall be deposited in the moulds in layers eight inches in thickness, and must be spread in layers at right angles to the lines of pressure. Temporary planking shall be placed at ends of partial layers, so that none shall run out to a thin edge. Excepting in arch work, all concrete must be deposited in horizontal layers of uniform thickness throughout. The ends, where a full layer cannot be laid at the time, shall be squared off by vertical temporary planking.

In Arch Work the construction of the arch ring must proceed continuously and without interruption from the time it is started until completed, work being begun at both abutments simultaneously and carried at a uniform rate of progress therefrom until joined in completion at the crown of the arch.

The thickness of the layers and the degree of ramming shall be such as specified for the other work, but the layers must be placed as near radially as practicable, and the ramming done in a direction as nearly at right angles thereto as possible.

Should the size of the arch be such as to make it impracticable to construct the entire ring in one day it may be divided vertically into a series of parallel rings of such width that one ring can be constructed continuously. The width of such ring shall however in no case be less than five feet. One side of this

subring shall be formed against the ring previously constructed, and the other side against a substantial vertical partition which must be removed immediately before commencing the next ring. In order to form a substantial bond between the adjacent parallel rings, cleats shall be fastened to the partitions in such locations and of such shape and dimensions as shall be directed by the Engineer.

In constructing new rings against old ones, the vertical surface of the old ring shall first be thoroughly cleaned and scrubbed with coarse brushes and water and then flushed with cement grout immediately before the placing of the new concrete.

In no case shall the work stop within eighteen inches of the top of the wall.

Concrete shall be placed immediately after mixing and any concrete not placed within thirty minutes of the time the water was first added shall be rejected. [18]

In exposed work expansion joints may be provided at intervals of fifty or as the Engineer may direct.

In ordinary short walls the joint may be made by setting up a temporary vertical form or partition of plank and completing the section behind it as though it were the end of the structure. The partition will be removed when the next section is begun and the new concrete placed against the old without mortar flushing. Locks shall be provided if directed or called for by the plans.

A shovel facing may be made on the face and back of the structure by carefully working the coarse stone back from the form by means of a shovel or

spade so as to bring the excess mortar of the concrete to the form, or,

About one inch of mortar (no grout) of the same proportions as used in the concrete shall be placed next to the forms immediately in advance of the concrete.

Care must be taken to remove from the forms the dried mortar which spatters against them, in order to secure a perfect face.

After the forms are removed, which should generally be as soon as possible after the conditions above referred to are fulfilled, any small cavities or openings in the face shall be neatly filled with mortar. Any ridges due to cracks or joints in the lumber shall be rubbed down with chisel or wooden float. The entire face may then be washed with a thin grout of the consistency of whitewash, mixed in the same proportion as the mortar of the concrete. The wash should be applied with a brush. The earlier the above operations are performed the better will be the result.

The tops of bridgeseats, pedestals, copings, wing walls, etc., shall be finished with a smooth surface composed of one part cement to two parts of screenings, or sand, applied in a layer of from one-half to one inch thick. This must be put in place with the last course of concrete. The finishing coat must be repeatedly trowelled so as to make an impervious coat of the character of the best sidewalk work.

Where concrete is deposited in connection with metal reinforcing, the greatest care must be taken to insure the coating of the metal with cement, and the

thorough compacting of the concrete around the metal. Wherever it is practicable the metal should be placed in position first. This can usually be done in the case where the metal occurs in the bottoms of the forms, by supporting the same on traverse wires, or otherwise, when the bottoms of the forms can be flushed with cement mortar, so as to get the mortar under the metal at the same time, and the concrete deposited immediately afterward. The mortar for flushing the bars should be composed of one part cement and two and one-half parts sand. The metal used in the concrete shall be free from dirt, oil or grease. Rust is not objectionable, but all mill scale should be removed by hammering the metal, or preferably by pickling the same in a weak solution of Muriatic acid. No reinforced concrete shall be laid in freezing weather.

Unless otherwise specified the Railroad Company will furnish f. o. b. cars at nearest railway station the metal necessary for reinforcing. The Contractor will unload and haul the same to the structure.

Spokane, Washington. [19]

Exhibit "B" [to Complaint—Agreement].

AGREEMENT.

In consideration of the payment of $743.86 made this date to Alverson & Koeper, sub-contractors, under contract dated May 15th, 1911, with Caughren, Boynton & Company, covering such work as specified between Spokane, Wash., and Ayer, Wash., on the O. W. R. & N. Co., all parties agree to cancel the contract as far as any future contemplated work is concerned and this settlement is in full for all past

work performed of whatever nature.

We, Alverson & Koeper, relinquish all claims of every description against Caughren, Boynton & Company, of the O. W. R. & N. Co. in consideration of the above.

(Signed) ALVERSON & KOEPER,
By J. L. ALVERSON.

We, Caughren, Boynton & Company, relinquish all claims against Alverson & Koeper for performance of any future work that may be required of our company by the O. W. R. & N. Co.

(Signed) CAUGHREN, BOYNTON & CO.
By SAM'L A. McCOY.

Signed this 23d day of January, 1912.

CAUGHREN, BOYNTON & CO.
SAM'L A. McCOY.
ALVERSON & KOEPER.
J. L. ALVERSON.
L. L. KOEPER.

Witness:

H. F. ALDRICH.
B. M. SYMINGTON. [20]

Exhibit "C" [to Complaint—Articles of Dissolution].

ARTICLES OF DISSOLUTION
OF THE
COPARTNERSHIP FIRM OF ALVERSON & KOEPER.

This AGREEMENT, entered into between James L. Alverson, L. L. Koeper and Harry H. Koeper this 19th day of January, 1912, witnesseth:

That the above-named parties have heretofore

been engaged in a contracting business under the firm name and style of Alverson & Koeper, and now wishing to dissolve said firm they have and hereby do mutually agree as follows, to wit:

1. That said partnership be and the same is hereby dissolved and terminated upon the following terms:

a. That said Koepers shall receive from the said Alverson five promissory notes executed by the said Alverson and James Z. Moore and Lawson Moore for the sum of four hundred dollars, each payable on or before one year from date, and bearing six per cent. per annum interest, said interest to be payable at the expiration of each note.

b. Also seven hundred and forty-three dollars, due said firm of Alverson & Koeper or whatever sum shall be due on their contract with Caughren, Boynton & Company, a firm of contractors of Spokane, Washington.

c. The said Koepers agree to assume the debt of Alverson & Koeper to the Washington Trust Company, supposed to be about the sum of fifteen hundred and fifty-seven dollars and interest thereon, and any other debts of that firm.

d. The said Koepers are to release the contract of Alverson & Koeper with the firm of Caughren, Boynton & Company for certain work to assign all interest in said contract to said Alverson so that said Alverson shall have all interest of Alverson & [21] Koeper in said contract.

e. The said Koepers sell, assign and transfer all their interest in the outfit of Alverson & Koeper, of

whatsoever kind, to said Alverson, and agree to execute to him a bill of sale to the said outfit, some of which is located now at or near the village of Marshall, Spokane County, Washington, some of it in the possession of the Pacific Transfer Company and all of which is to be more particularly described in said bill of sale, but wheresoever it may be, it is and shall be the property of the said Alverson. The books of the said firm are included in the firm outfit and are to be delivered to and be the property of said Alverson.

f. The said Alverson is also to pay the Koepers the sum of one hundred dollars in case, receipt whereof is hereby acknowledged by the said Koepers.

g. The office furniture of the said firm is included in the term outfit and is to be delivered to and be the property of the said Alverson.

IN WITNESS WHEREOF the aforesaid parties have hereunto signed their names the date above written.

(Signed) J. L. ALVERSON.
HARRY H. KOEPER.
L. L. KOEPER. [22]

Exhibit "D" [to Complaint—Letter].

Spokane, Wash., Feb. 1, 1912.

Mr. J. L. Alverson,
Spokane, Wash.

Dear Sir:

Referring to the original contract dated May 15th, 1911, between ourselves and Messrs. Alverson & Koeper, and further referring to the release or assignment of this contract dated January 23, 1912.

It is our desire that you go ahead and complete all of the bridges betwen the Spokane River and Hangman Creek crossing of the O. W. R. & N. Co. and the eastern limits of our contract in accordance with the prices as set forth in the contract between Caughren, Boynton & Co. and Alverson & Koeper, dated May 15th, 1911. With the understanding that such work is dependable entirely upon the action of the O. W. R. & N. Co. as to the time that they may desire it done.

If this agreement is satisfactory to you will you kindly sign carbon copy of this letter attached and return to us.

Sincerely yours,
(Signed) CAUGHREN, BOYNTON & CO.
By SAM'L A. McCOY.
J. L. ALVERSON.

H. F. ALDRICH.
L.MOREL. [23]

Exhibit "E" [to Complaint—Arbitration Agreement].

ARBITRATION AGREEMENT.

WHEREAS, the parties hereto entered into a contract in writing dated the first day of June, 1911, whereby and by the terms whereof the party of the second part undertook and agreed to build and construct all concrete abutments and other structures on first party's line of railroad between the City of Spokane and Ayer Junction, as will more fully appear by said contract; and

WHEREAS, a portion of said work has been com-

pleted and a portion thereof remains at this date uncompleted; and

WHEREAS, certain controversies have arisen between said parties relative to the fair compensation to be received for portions of said work, and other matters, and it is desired that all said matters be settled and adjusted;

NOW, this agreement, made and entered into this 25th day of April, A. D. 1912, by and between the Oregon-Washington Railroad & Navigation Company, party of the first part, herein designated as the Railroad Company, and Caughren, Boynton & Company, parties of the second part, hereinafter designated as the Contractor, that all said matters in difference shall be settled and determined in the manner following, to wit:

First. The contractor shall be relieved of all obligation to do further work under the terms of said contract, at the crossing of said Railroad Company's line over the Snake River, and structures in connection therewith.

Second. The contractor shall be relieved of all obligation to build any structures under said contract, the construction of which has not at this date been commenced, unless within thirty days from the date of this contract the Railroad Company shall notify the contractor in writing of its election to have all structures except those at the Snake River completed under the terms of said **[24]** contract.

Third. All other structures and work shall be completed under the terms of the said contract.

Fourth. All other matters now unsettled under

the terms of said contract shall be submitted to arbitrators and settled by the award of arbitrators to be chosen in the following manner, to wit: The Railroad Company shall choose a competent engineer and the contractor shall choose a competent engineer, each of said engineers to be of recognized standing and ability, and to be selected outside the parties to this agreement, their partners, officers or present employees, and from among engineers of the Pacific Northwest.

In the event that said two arbitrators are unable to agree as to any matter to be determined under the terms hereof, they two shall agree upon and appoint a third engineer of like abilities and standing, who shall, with said two engineers, pass upon all such questions as have not been determined, the agreement of any two of said board of three to be decisive of any matter.

In the event that said two engineers cannot agree as to the third, then said third engineer shall be selected and appointed by the Federal Judge of the Northern District of the State of Washington.

Said arbitrators shall be paid in the following manner, to wit: Each party shall pay the arbitrator selected by it, and the parties shall each pay one-half of all other expenses, and said arbitrators shall have access at all times to all books, files, plans and other data of either of the parties hereto, in connection with the work under said contract and shall employ the necessary assistance in connection with their duties hereunder, and each of the parties to this agreement shall render all possible assistance

in connection with the determination of all matters hereunder.

Fifth. The basis of compensation for the work performed and now unsettled for under the terms of said contract, shall be as **[25]** follows:

All work performed at Snake River shall be paid for upon a force account basis, including a percentage to cover profit and superintendence by members of the contractor firm of 10%, said award upon said basis to be in full settlement of all claims in any manner arising out of said portion of the work to be performed under said contract.

In connection with said Snake River work the arbitrators shall determine the cost of all equipment secured for and used in connection with and now upon said work, and there shall be added to such cost a sum equal to 10% thereof. Said arbitrators shall also determine an amount which would be, in their judgment, the fair rental value of said equipment to the date of said award. Said arbitrators shall thereupon make an award covering the total cost of said work and furnish a copy thereof to the parties hereto, and within ten days after the receipt of a copy thereof, the Railroad Company shall elect which of said awards it will accept and shall notify the contractor in writing of its said election, and if it elects to accept the award including the cost of said equipment, title to said equipment shall thereupon pass to the Railroad Company; if it elects to accept the award including the rental of said equipment, title to said equipment shall remain in the contractor,

All payments heretofore made on account of said work at the Snake River shall be credited against the total cost thereof and final award shall be for the balance.

Said arbitrators shall determine the character of that certain structure known as the Kinch arch, and shall determine the treatment thereof in order that the same may conform to the requirements necessary in connection therewith, and shall determine the compensation to be made to the contractor on account thereof.

In event that the Railroad Company does not elect, within thirty days from the date hereof, to have the contractor complete **[26]** the structures, the construction of which has not at this date been commenced, then and in that event the Railroad Company shall assume all obligations of the contractor to the party or parties holding sub-contracts for the construction thereof, and said arbitrators shall determine the amount of profit which the contractor might reasonably have made upon said portions of said work, and make an award thereof, which shall be paid by the Railroad Company in consideration of the cancellation of said contract as to said work.

All other claims and matters in difference between the parties shall be submitted to said arbitrators and determined as speedily as possible.

Said arbitrators shall be at liberty to make separate awards as to any and all items submitted to them hereunder, and shall immediately notify the parties in writing of such awards, and the same shall

thereupon become due and payable and shall be promptly paid.

This agreement and all powers of the arbitrators hereunder shall remain in full force until all matters arising out of the contract between the parties hereto and referred to herein, shall be finally settled and determined, and full payment made to the contractor of all amounts due thereunder.

The awards made by the arbitrators hereunder shall be final, each party hereto hereby waiving the right to appeal therefrom.

IN WITNESS WHEREOF, the party of the first part has caused this agreement to be signed by its proper officers thereunto duly authorized, and the said second party has caused the same to be signed by a member of said contracting firm thereunto duly authorized, the day and year first above written.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY.

By _____

Attest: _____

[27]

CAUGHREN, BOYNTON & COMPANY.

By _____

[Endorsements]: Complaint. Filed in the U. S. District Court for the Eastern District of Washington. October 7, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy. [28]

In the Superior Court of the State of Washington in and for the County of Spokane.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON–WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation, and J. A. CAUGHREN, CARLOS N. BOYNTON, H. W. CHURCH, S. A. McCOY and MARTIN WOLDSON, Copartners Doing Business Under the Firm Name and Style of CAUGHREN, BOYNTON & COMPANY,

Defendants.

Order of Removal.

The petition of the Oregon-Washington Railroad & Navigation Company, one of the defendants above named, for the removal of said cause from this court to the District Court of the United States for the Eastern District of Washington, Northern Division, coming on regularly for hearing, and said defendant and petitioner having filed herein its said petition and presented to this court a good and sufficient bond properly conditioned, as required by law, and with sufficient surety; and it appearing that said action is a proper action for removal to the District Court of the United States for the Eastern District of Washington, Northern Division, and that said petitioner has presented its said petition for removal within the time and in the manner prescribed by

law, and that due notice has been given to the plaintiff herein of the time when said petition was to be presented to the Court;

Now, therefore, it is ordered and adjudged that said petition and the bond herein be, and the same are, hereby accepted, and said bond is hereby approved.

And it is further ordered that said Court proceed no further in said action, and that said action is hereby removed to the District Court of the United States for the Eastern District of Washington, Northern Division, and that the clerk of the court proceed **[29]** to make and prepare a transcript of the record in said cause as the same is now on file in his office.

Done in open court this 3d day of August, A. D. 1914.

(Signed) BRUCE BLAKE,
Judge.

Filed August 3, 1914, at 10:10 o'clock A. M. Glenn B. Derbyshire, Clerk. By W. C. Steinmetz, Deputy.

[Endorsements]: Order of Removal. Filed in the U. S. District Court for the Eastern District of Washington, as a Part of the Transcript on Removal from State Court. August 31, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy. **[30]**

In the District Court of the United States, for the Eastern District of Washington, Northern Dision.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON–WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation, and J. A. CAUGHREN, CARLOS N. BOYNTON, H. W. CHURCH, S. A. McCOY and MARTIN WOLDSON, Copartners Doing Business Under the Firm Name and Style of CAUGHREN, BOYNTON & COMPANY,

Defendants.

Order [Dismissing Cause as to Certain Defendants].

Upon the stipulation of the above-named plaintiff and the above-named defendants, excepting the Oregon-Washington Railroad & Navigation Company, a corporation, it is hereby

ORDERED that this cause be, and the same is hereby dismissed as to said defendants, J. S. Caughren, Carlos Boynton, H. W. Church, S. A. McCoy and Martin Woldson, copartners doing business under the firm name and style of Caughren, Boynton & Company, without costs to either party.

Done in open court this 8th day of October, 1914.

(Signed) FRANK H. RUDKIN,

Judge.

[Endorsements]: Order Dismissing Certain Parties Defendant. Filed in the U. S. District Court for the Eastern District of Washington, October 8, 1914. W. H. Hare, Clerk. By Frank C. Nash, Deputy. **[31]**

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Amended Answer.

Comes now the defendant, Oregon-Washington Railroad & Navigation Company, and in answer to the complaint of the plaintiff herein, admits, denies and alleges, as follows:

I.

Admits the allegations contained in paragraph one (1) of plaintiff's complaint.

II.

Alleges that it has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph two (2) of said complaint, and therefore denies the same.

III.

Admits the allegations contained in paragraph three (3) of said complaint, except that the eastern

limits of the contract therein referred to were Post Street. Defendant denies that allegation and alleges that the eastern limits of said contract were the west line of Monroe Street in the city of Spokane.

IV.

Admits that Caughren, Boyton & Company entered into a contract with J. L. Alverson and L. L. Koeper, copartners, and that the copy of contract marked exhibit "A" was a copy of the contract so entered into, and denies each and every other allegation therein contained.

V. **[32]**

Alleges that it has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph five (5) of said complaint, and therefore denies the same.

VI.

Denies the allegations contained in paragraph six (6) of said complaint.

VII.

Alleges that it has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph seven (7) of said complaint, and therefore denies the same.

VIII.

Denies the allegations contained in paragraph eight (8) of said complaint.

IX.

Defendant admits that it entered into the contract designated as exhibit "E" in paragraph nine (9) of plaintiff's complaint, and denies each and every other allegation contained in said paragraph nine (9).

X.

Admits that it did not elect within thirty days from the date mentioned in said contract referred to in paragraph nine (9), to have the contractor complete the structure, as alleged in paragraph ten (10), and admits that it entered into a contract with contractors not connected with the plaintiff, or with Caughren, Boynton & Company as alleged in paragraph ten (10), but denies each and every other allegation therein contained.

XI.

Denies each and every allegation contained in paragraph eleven (11) of said complaint.

XII.

Admits that the plaintiff has not performed any of the work or furnished any of the materials as alleged in paragraph [33] twelve (12) of said complaint, and admits that said work has been completed by other contractors, and denies each and every other allegation therein contained, and alleges that plaintiff has not been damaged in the sum of $71,750, as alleged in said paragraph twelve (12), nor in any sum whatsoever.

FIRST AFFIRMATIVE DEFENSE.

I.

For its first affirmative defense herein, the defendant alleges that it now is and at all times herein mentioned was a corporation organized under and by virtue of the laws of the State of Oregon, and authorized to do business within the State of Washington.

II.

That on or about the first day of June, A. D. 1911,

the Oregon-Washington Railroad & Navigation Company entered into a contract with the Caughren, Boynton & Company, a copartnership, composed of J. A. Caughren, Carlos M. Boynton, H. N. Church, S. A. McCoy and Martin Woldson, under which contract the said Caughren, Boynton & Company were to construct foundations, concerte abutments, piers, pedestals and culverts on the Oregon-Washington Railroad & Navigation Company's line near Ayer, Washington, to the west line of Monroe Street in the city of Spokane, Washington.

III.

That section 2 of said contract is as follows:

"The contractor for the consideration hereinafter provided, hereby agrees not to assign or transfer this contract, or re-let any of the said work in whole or in part, without the written consent of the Railroad Company or the Engineer, but shall constantly prosecute said work in person."

IV.

That in violation of pararaph 2 of said contract, which paragraph is hereinabove fully set out, the said Caughren, Boynton & Company did, without the written consent of the Railroad Company, or the engineer, and without any consent whatever, thereto, sublet a portion of the said work provided in said contract, to plaintiff [34] herein as alleged in paragraph four of plaintiff's complaint.

V.

That the said subcontract between said Caughren, Boynton & Company, and the said J. L. Alverson and L. L. Koeper, was and is absolutely void by

reason of the failure of said Caughren, Boynton & Company to secure the consent of the defendant herein to said subcontract.

SECOND AFFIRMATIVE DEFENSE.

I. and II.

For its second affirmative defense herein, defendant reiterates the allegations contained in paragraphs one (1) and two (2) of its first affirmative defense, and makes the same a part hereof.

III.

That the plaintiff herein, and L. L. Koeper, entered into a subcontract with Caughren, Boynton & Company, for the construction of certain culverts, pedestals, piers, abutments and foundations on the Oregon-Washington Railroad & Navigation Company's line between Ayer, Washington, and the west line of Monroe Street, in the city of Spokane, Washington.

IV.

That under and by virtue of the terms of said agreement the plaintiff and his said partner, agreed to execute a bond in the sum of 25% of the estimated amount of the said contract, conditioned upon the faithful and satisfactory execution thereof in accordance with all of its terms, which provision is found in paragraph twelve (12) of said subcontract, copy of which is attached to plaintiff's complaint, made a part thereof, and marked exhibit "A."

V.

That said plaintiff failed to provide said bond in accordance with the terms of the contract herein-

above referred to and the same was never furnished to said contractor. [35]

THIRD AFFIRMATIVE DEFENSE.

I. and II.

For a third affirmative defense, defendant reiterates the allegations contained in paragraphs one (1) and two (2) of its first affirmative defense herein, and makes them a part hereof.

III.

That thereafter said Caughren, Boynton & Company entered into a subcontract with the plaintiff herein and L. L. Koeper, as copartners, which subtract is fully set out in plaintiff's complaint by copy thereof, and marked exhibit "A."

IV.

That thereafter some differences arising between the defendant herein and the said contractors, Caughren, Boynton & Company, and agreement for the settlement of said differences was entered into, which agreement is set out in plaintiff's complaint, made a part thereof, and marked exhibit "E."

V.

That after the settlement or arbitration provided for in said agreement above referred to with said Caughren, Boynton & Company, was completed, plaintiff notified the defendant herein that it had a subcontract with the said Caughren, Boynton & Company, which said contract plaintiff claimed was as fully set out in exhibit "A" attached to plaintiff's complaint; that thereupon plaintiff claimed the right to perform the work provided in said subcontract.

VI.

That by the terms of said subcontract the plaintiff undertook to construct certain foundations, abutments, piers, pedestals and culverts on the Oregon-Washington Railroad & Navigation Company's line between Ayer, Washington, and the west line of Monroe Street, in the city of Spokane, Washington.

VII. [36]

That said defendant offered to have the work covered by said subcontract done by the plaintiff in accordance with the said subcontract, but plaintiff refused to do said work or any part thereof unless defendant would furnish the money necessary in order to enable said plaintiff to perform the said work covered by the said subcontract, and also furnish free to said plaintiff all necessary rock, gravel, sand and cement. This defendant refused to do.

VIII.

That plaintiff was at all times unable to do and carry on the work provided in his said subcontract on account of his inability to provide the means with which to carry on the said work.

IX.

That after the plaintiff had refused to do said work covered by the said subcontract hereinbefore referred to, the defendant was compelled to have said work performed by other parties than plaintiff.

WHEREFORE, defendant prays that plaintiff recover nothing herein, and that the defendant have judgment against the plaintiff for its costs and dis-

bursements provided by law.

(Signed) A. C. SPENCER and
HAMBLEN & GILBERT,
Attorneys for Defendant.

State of Washington,
County of Spokane,—ss.

L. R. Hamblen, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the defendant in the above-entitled cause, and makes this verification in its behalf; that he is duly authorized so to do; that he has read the foregoing amended answer, knows the contents thereof and that the same is true as he verily believes.

(Signed) L. R. HAMBLEN. [37]

Subscribed and sworn to before me, this 17th day of February, 1915.

[Seal] (Signed) HUBERT P. SUING,
Notary Public, Residing at Spokane, Wash.

[Endorsements]: Amended Answer. Filed in the U. S. District Court for the Eastern District of Washington, February 18, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [38]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Reply.

Comes now the above-named plaintiff, and replying to the affirmative matter pleaded as defenses in defendant's amended answer to plaintiff's complaint:

I.

Denies each and every allegation, matter and thing contained in the first affirmative defense, second affirmative defense and third affirmative defense, not expressly admitted to be true in plaintiff's complaint.

FURTHER REPLYING TO FIRST AFFIRMATIVE DEFENSE.

II.

Admits paragraph two of said first affirmative defense.

III.

As to paragraph three of said first affirmative defense, this plaintiff has no knowledge or information sufficient to form a belief as to the truth or falsity of

the matter contained in said paragraph three, and therefore denies the same.

IV.

As to the matters and things pleaded in paragraph four of said first affirmative defense, plaintiff has no knowledge or information sufficient to form a belief as to the truth or falsity thereof, and therefore denies the same.

V. [39]

Denies each and every allegation, matter and thing contained in paragraph five of said first affirmative defense.

Further replying to said first affirmative defense, plaintiff alleges:

1. That regardless of the provisions contained in the contract between defendant and Caughren, Boynton & Company with reference to any prohibition against assignment or subletting of said contract or any part thereof, that after said contract between defendant and said Caughren, Boynton & Company was executed and signed, that practically all of the work covered by said contract was sublet to various subcontractors, among which was plaintiff, with the knowledge, consent, acquiescence and approval of said defendant and their engineers in charge of said work; that thereafter, said defendant, during all of the time that said work was being carried on by said subcontractors of said Caughren, Boynton & Company, negotiated with, dealt with, gave orders to, and directed the work and duties of said subcontractors, including this plaintiff, and made no complaint with reference to any subletting

of contracts, and by defendant's acts of acquiescence and dealings with said subcontractors, paying their laborers, furnishing materials to them, giving orders and directions as to the performance of the work, and numerous other acts and things, all of which this plaintiff alleges constitutes a complete waiver of said clause in said contract prohibiting subletting of said work, without the written consent of said railroad company.

2. That after the contract referred to in plaintiff's complaint as having been entered into between him and Caughren, Boynton & Company was executed, and of which the defendant had knowledge and notice, it made no complaint on account of said subcontract having been given to this plaintiff, but acquiesced therein, and gave directions and orders to plaintiff with reference to said work, and caused him to establish his contracting outfit on the [40] company's grounds, at great expense, giving him orders to get ready to do the work referred to in plaintiff's complaint, for which plaintiff is now asking damages on account of being prevented from doing; that defendant caused plaintiff to incur great expense in making preparation to perform said work; that plaintiff did actually do part of said work with the approval of said company, said company knowing that plaintiff was doing so under and by virtue of said subcontract with Caughren, Boynton & Company, and that no written notice of consent of said railroad had been obtained from the company or its engineer in charge of the work. That in all of defendant's dealings with plaintiff, he was treated

by said company and its engineer as having a right to perform the work under said subcontract with Caughren, Boynton & Company, and that defendant wholly waived said provision against subletting, if any such provision was contained in the contract referred to in defendant's first affirmative defense.

3. That by reason of defendant inducing plaintiff to go to great expense in preparing to perform the work under said subcontract, in getting his contracting outfit on the company's ground and arranging for supplies, gravel, cement and other materials with which to perform said subcontract, and by reason of the fact that the engineer for said company, in charge of said work, impliedly held out to plaintiff, that he, plaintiff, had the right to perform said work as a subcontractor, and numerous other acts and things done by said defendant and its engineer, in inducing, inviting and influencing this plaintiff to do numerous acts and things in preparation for the performance of said work, under said subcontract referred to in plaintiff's complaint, plaintiff now says that defendants is, and ought to be estopped from now claiming that the subletting of said contract to plaintiff by Caughren, Boynton & Company, is void and in violation of section two of the contract executed between the said Caughren, Boynton & Company and defendant, [41] set out as a first affirmative defense in defendant's amended answer.

REPLYING TO THE SECOND AFFIRMATIVE DEFENSE.

I.

Admits paragraphs one and two thereof, but al-

leges that said contract extended to the west line of Post Street in the city of Spokane, instead of the west line of Monroe Street in said city.

II.

Admits each and every allegation, matter and thing contained in paragraphs three, four and five of said second affirmative defense, excepting that said contract extended to the west line of Post Street in the city of Spokane, instead of the west line of Monroe Street in said city.

III.

Further replying to said second affirmative defense, plaintiff alleges:

That none of the agreements referred to in said affirmative defense, which were made between Caughren, Boynton & Company and plaintiff and L. L. Koeper, were made or entered into for the benefit of this defendant, or pertaining to, or that it had any interest in the same; that the bond required by said contract was not for the benefit or protection of defendant; that it had no interest therein, and had no right to complain because said bond was not executed by the said subcontractor and original contractor; that it is wholly immaterial as to whether or not said subcontract contained such provision with reference to said bond.

IV.

Further answering said second affirmative defense, plaintiff alleges:

That said Caughren, Boyton & Company waived said provision in requiring a bond to be given to them by plaintiff and said Koeper, did not require

the same, but permittted plainiff to do said [42] work just the same as though bond had been given, and acquiesced in all the plaintiff did in carrying out said subcontract, without any bond being executed; that regardless of the provisions of said contract, the custom was carried out continuously, that no bond should be given by any of the said subcontractors, and none were executed by any of the subcontractors with said Caughren, Boynton & Company, and in every case, said provision requiring bond was wholly waived by said Caughren, Boynton & Company.

REPLYING TO THE THIRD AFFIRMATIVE DEFENSE.

I.

Admits paragraphs three and four. As to paragraph five, plaintiff admits that he notified defendant that he had a subcontract with said Caughren, Boynton & Company, which said contract is fully set out as exhibit "A" in plaintiff's complaint, and plaintiff claimed the right to perform the work set out in said contract; plaintiff denies that said notice was given to defendant after arbitration was entered into, but long before said arbitration agreement was executed, carried out or signed, plaintiff informed defendant of his said subcontract with Caughren, Boynton & Company, and it at all times knew at the time said arbitration agreement was signed, that plaintiff's subcontract was the only one left on said work and that all other subcontractors had been settled with and their subcontracts completed, and that the provisions of said arbitration agreement applied

exclusively and wholly to this plaintiff, as well known to defendant at all times.

II.

Plaintiff admits paragraph six, excepting the words, "The west line of Monroe Street," and alleges that in lieu of said words, the fact is that said contract extended to the west line of Post Street, in the city of Spokane.

III.

Plaintiff denies each and every allegation, matter and [43] thing contained in paragraph seven of said third affirmative defense, pleaded in defendant's amended answer, excepting the words, "That defendant offered to have the work covered by said subcontract done by the plaintiff in accordance with the said subcontract," which excepted matter, plaintiff admits.

IV.

Plaintiff denies that he refused to do said work unless defendant would furnish the money necessary, in order to enable plaintiff to perform said work covered by said subcontract.

Denies that he required defendant to furnish to plaintiff the rock, gravel, sand or cement. Denies that defendant refused to furnish said materials.

V.

Further replying to said paragraph, plaintiff alleges:

That it was the custom, not only in the performance of the several contracts for railroad work referred to in the pleadings in this cause, but it is the universal custom with contractors and subcon-

tractors and railroad companies, that ninety per cent of the amount due each month, for any work performed by contractor or subcontractor, shall be paid to said contractor or subcontractor, and it was not necessary that said defendant company should finance plaintiff, or loan him the money to furnish gravel, sand, or anything else to enable plaintiff to perform his contract, or to finance the performance thereof.

VI.

That plaintiff alleges that he was financially able, at all times, to carry out and perform said contract, and ready and willing to perform it, but was held in abeyance by said defendant, and compelled to wait numerous months, with his outfit on his hands, getting ready to perform said work under the direction of the engineers of said defendant, all of which is well known to defendant, and acquiesced in, and approved by it. **[44]**

VII.

Denies each and every allegation, matter and thing contained in paragraph six of said third affirmative defense.

VIII.

Denies each and every allegation, matter and thing contained in paragraph seven of said third affirmative defense.

IX.

Denies that defendant was compelled to have said work performed by other parties than plaintiff. Denies that plaintiff ever refused to do said work, but was willing to do it at all times, and did not do

and perform said work for the reason that he was prevented from so doing by the acts of defendant hereinbefore pleaded in this reply and plaintiff's complaint.

X.

Further replying to the affirmative matter contained in defendant's amended answer, and several affirmative defenses, this plaintiff alleges:

1. That Caughren, Boynton & Company, who had the original contract for doing the work referred to in plaintiff's complaint, in conjunction with an amount of other construction work on said railroad line, never did, in person, nor as a copartnership, perform any of said work, nor did they perform anything in carrying out said work; that all of said work was sublet to subcontractors, one of which was this plaintiff. That no bond was ever taken from any of them, or required; that the defendant company dealt with, negotiated with, and aided in carrying out said work of said subcontractors, including plaintiff, knowing that no bond had been given by any of them, and knowing that the company nor its engineer had not consented in writing, that Caughren, Boynton & Company should sublet said work.

2. That after the execution of the arbitration agreement referred to in plaintiff's complaint as exhibit "E," and in which [45] arbitration agreement between Caughren, Boynton & Company and defendant it was agreed that defendant should assume all obligations of the contractors, and the party or parties holding subcontracts, and in pursuance thereto, this defendant, by

reason of the award made by the arbitrators provided in said arbitration agreement, paid to the said Caughren, Boynton & Company a large sum of money, the exact amount of which plaintiff is not exactly informed, but is informed and believes, and states that it was approximately five thousand dollars ($5000), as and for the amount of profit which Caughren, Boynton & Company would have made on the work referred to in plaintiff's complaint, and which plaintiff was prevented from doing and performing by the said railroad company, notwithstanding the fact that said work had been let and given to other subcontractors by said railroad company, after plaintiff had been refused the opportunity of performing the same as hereinbefore alleged.

(Signed) PLUMMER & LAVIN and
JAMES Z. MOORE,
Attorneys for Plaintiff.

State of Washington,
County of Spokane,—ss.

J. L. Alverson, being first duly sworn, deposes and says: That he is the plaintiff in the above-entitled action, had read the foregoing reply, knows the contents thereof, and that the same is true.

(Signed) J. L. ALVERSON.

Subscribed and sworn to before me this 23d day of February, 1915.

[Seal] (Signed) JOSEPH J. LAVIN,
Notary Public in and for the State of Washington, residing at Spokane, Wash. [46]

[Endorsements]: Reply. Service admitted this 23d day of February, 1915. (Signed) Hamblen & Gilbert, Attorneys for Defendant. Filed in the U. S. District Court for the Eastern District of Washington, February 25, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. **[47]**

In the Distrcit Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON–WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Verdict.

We, the jury in the above-entitled cause, find for the defendant.

(Signed) W. H. DIBBLE,
Foreman.

[Endorsements]: Verdict. Filed April 23, 1915. W. H. Hare, Clerk. **[48]**

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON–WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Stipulation [Allowing Plaintiff 30 Days to File Exceptions to Instructions, etc.].

It is hereby stipulated and agreed by the parties hereto, by their respective counsel, that plaintiff may have thirty days in which to take and file exceptions to the Court's instructions, and for the preparation and service of a bill of exceptions in the above entitled case.

(Signed) PLUMMER & LAVIN and
J. Z. MOORE,
Attorneys for Plaintiff.
A. C. SPENCER and
HAMBLEN & GILBERT,
Attorneys for Defendant.

[Endorsements]: Stipulation extending Time for filing Exceptions to Instructions. Filed in the U. S. District Court for the Eastern District of Washington. May 1, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. **[49]**

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON–WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Motion for New Trial.

Comes now the above-named plaintiff and moves this Court to set aside the verdict of the jury heretofore rendered in this cause, to vacte the judgment entered thereon, and to grant a new trial of said cause upon the following grounds, to wit:

Errors in law occurring at the trial.

The particular errors realized upon by your petitioner are as follows:

I.

That the Court erred in instructing the jury as follows:

"I mention this for the reason that a contract between the defendant and Caughren, Boynton & Company has been received in evidence to assist in determining the subject matter and limits of the work contemplated in the Alverson-Koeper contract, exhibit 'A'; that said Caughren, Boynton & Company contract with the railroad company was received for no other purpose, and its terms and

provisions are not to be considered by you except as instructed by the Court."

II.

That the Court erred in instructing the jury as follows:

"I charge you in this connection that the contract exhibit 'A', under which plaintiff claims in this case, does not require the railroad company to furnish sand without cost to plaintiff, and if you find from the evidence, that the plaintiff imposed that condition upon the defendant, then the plaintiff in effect breached and abandoned the contract, and under such circumstances you should find for the defendant."

III.

That the Court erred in instructing the jury as follows:

"If you find that the plaintiff imposed and demanded, as a condition for the performance of the work, that the defendant furnished gravel without cost to the plaintiff upon the work to be [50] done under the contract exhibit 'A,' then you should find for the defendant."

IV.

That the Court erred in instructing the jury as follows:

"If you find that the plaintiff required and demanded as a condition for the performance of the contract that the railroad company finance the plaintiff, then I charge you in making such demand and imposing such condition, if you find the same was made by the plaintiff, then contract became

thereby abandoned and breached by the plaintiff, and defendant was excused from the performance of the said contract by it, and your verdict should be for the defendant."

V.

That the Court erred in instructing the jury as follows:

"The contract is somewhat indefinite as to its eastern limits. One party contends that the contract extends only to the Monroe Street Bridge crossing the Spokane River. The other side contends that it extends to Station 24, at or in the vicinity of Post Street, east of the Spokane River. In other words, gentlemen of the jury, the plaintiff contends that his contract covered the piers and other construction work north of the Spokane River and east of the Monroe Street Bridge. The defendant contends that it did not cover or include this work. That will be one of the questions you will be called upon to determine. If you find from the preponderance of the testimony that the contract did extend to and include the work beyond, or on the east side of the Monroe Street Bridge, you will take that work into consideration in assessing the amount of the recovery. And if, on the other hand, you are not satisfied that that work was included in plaintiff's contract you will exclude that part of the work from your consideration entirely in your deliberations."

VI.

That the Court erred in instructing the jury as follows:

"Mr. SPENCER.—I would ask Your Honor to instruct the jury that in the event they find that the plaintiff exacted the requirement for the furnishing of sand and gravel without cost to the plaintiff, or that he exacted the condition of financing, as instructed by Your Honor, then in either of said contingencies, they are not required to find upon the special findings which Your Honor has submitted.

The COURT.—Oh, yes."

VII.

That the Court erred in submitting the question to the jury as to whether or not the plaintiff had abandoned his contract.

VIII.

That the Court erred in submitting to the jury the question as to whether or not plaintiff had, himself, breached his **[51]** contract.

(Signed) JAMES Z. MOORE, and
PLUMMER & LAVIN,
Attorneys for Plaintiff.

[Endorsements]: Motion for New Trial. Service admitted this 21st day of May, 1915. (Signed) Hamblen & Gilbert, Attorney for Defendant. Filed in the U. S. District Court for the Eastern District of Washington. May 21, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. **[52]**

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Order Denying Motion for New Trial.

Plaintiff's motion for a new trial coming on regularly for hearing on the 21st day of June, 1915, and plaintiff appearing by his attorneys Messrs, Plummer & Lavin, and defendant appearing by its attorneys, Hamblen & Gilbert, and the matter having been fully argued and the court being fully advised;

Now, therefore, it is ordered, that said motion be and the same hereby is denied.

Done in open court this —— day of June, 1915.

(Signed) FRANK H. RUDKIN,

Judge.

[Endorsements]: Order Denying Motion for New Trial. Filed June 23, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. **[53]**

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON–WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Judgment.

This cause having come on for trial on the 19th day of April, A. D. 1915, and the plaintiff having appeared in person and by his attorneys, Messrs. Plummer & Lavin, and Judge J. Z. Moore, and the defendant appearing by its attorneys, Mr. A. C. Spencer and Messrs. Hamblen & Gilbert, and a jury having been empanelled and sworn to try said cause, and the plaintiff and the defendant having introduced evidence in said cause, and the Court having instructed said jury and said jury having considered said cause and returned a verdict in court in favor of the defendant, and said verdict having been regularly filed in the records of said cause, and the plaintiff having presented his motion for a new trial and his motion having been heard by the Court and denied, and the Court being fully advised in the premises;

Now, therefore, it is ORDERED and ADJUDGED, that the plaintiff have and take nothing by his action, and that the defendant have and re-

cover judgment against the plaintiff for its costs and disbursements herein.

Done in open court this 21st day of June, 1915.

(Signed) FRANK H. RUDKIN,
Judge.

[Endoremens]: Judgment. Filed in the U. S. District Court. June 21, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. **[54]**

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,
Plaintiff,

vs.

OREGON–WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,
Defendant.

Order [Extending Time to June 13, 1915, to Prepare Bill of Exceptions].

It is ordered that the time for preparing and serving bill of exceptions in the above-entitled cause be and the same is hereby extended until and including the 13th day of June, 1915.

Done this 20th day of May, 1915.

(Signed) FRANK H. RUDKIN,
Judge.

[Endorsements]: Order Extending Time for Preparing and Serving Bill of Exceptions. Filed in the U. S. District Court for the Eastern District of

Washington, May 24, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [55]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON–WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Order [Extending Time to July 1, 1915, to Settle of Exceptions, etc.].

Upon motion of defendant and for good cause shown,

It is hereby ORDERED that the time for settling the bill of exceptions proposed by plaintiff herein, and within which the defendant may file objections to said bill of exceptions and propose amendments thereto, be and the same is hereby extended to July 1, 1915.

Ordered this 31st day of May, A. D. 1915.

(Signed) JEREMIAH NETERER,

Judge.

[Endorsements]: Order Granting Extension of Time to Settle Bill of Exceptions. Filed in the U. S. District Court for the Eastern District of Washington, June 2, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [56]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVGATION COMPANY, a Corporation,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED: That on, to wit, the 19th day of April, 1915, the above cause came on for trial before the Honorable Frank H. Rudkin, Judge of the above-entitled court, and a jury, upon the issues raised by the pleadings, Plummer & Lavin and J. Z Moore appearing as attorneys for plaintiff, and Hamblen & Gilbert and A. C. Spencer appearing as attorneys for defendant. The jury was then called and sworn to try the cause, whereupon the respective parties made their opening statements, and thereafter the following evidence was adduced and proceedings had.

[Testimony of J. L. Alverson, the Plaintiff.]

J. L. ALVERSON, being duly sworn, testified as follows:

I am the plaintiff in the above-entitled cause, and on the 15th day of May, 1911, the contract marked "Plaintiff's Exhibit 18," a copy of which is attached to the complaint in this action, and identified as

(Testimony of J. L. Alverson.)

exhibit "A" thereto, was executed by Caughren, Boynton & Company and J. L. Alverson and L. L. Koeper.

(Which contract was offered in evidence and duly admitted without objection, whereupon and thereafter contract marked "Plaintiff's Exhibit 1" was duly admitted in evidence without objection, and thereafter the contract marked "Plaintiff's Exhibit 19" was duly admitted in evidence without objection, and thereafter the paper marked "Plaintiff's Exhibit 21" was duly admitted in evidence without objection, which is, and was as follows:

[Plaintiff's Exhibit No. 21—Letter, February 1, 1912.]

"Spokane, Washington, Feb. 1, 1912. [57]

Mr. J. L. Alverson,

Spokane, Wash.

Dear Sir:

Referring to the original contract dated May 15th, 1911, between ourselves and Messrs. Alverson & Koeper and further referring to the release or assignment of this contract dated Jan. 23d, 1912. It is our desire that you go ahead and complete all of the bridges between the Spokane River and Hangman Creek crossing of the O.-W. R. & N. Co., and the eastern limits of our contract in accordance with the prices as set forth in the contract between Caughren, Boyton & Company and Alverson & Koeper, dated May 15th, 1911. With the understanding that such work is dependable entirely upon

(Testimony of J. L. Alverson.)

the action of the O.-W. R. & N. Co. as to the time they desire it done.

If this agreement is satisfactory to you will you kindly sign carbon copy of this letter attached and return to us.

Sincerely yours,
CAUGHREN, BOYNTON & CO.,
By SAM'L A. McCOY.

H. F. ALDRICH.
L. WOREL. J. L. ALVERSON."

That thereafter "Plaintiff's Exhibit," being the arbitration agreement, was duly admitted in evidence without objection.)

WITNESS, continuing his testimony, testified as follows: The contract which Caughren, Boynton & Company had with the railroad company, covered, according to my understanding, all of the concrete work between Station 24, being a point immediately east of the Spokane River Bridge to the east end of the long bridge crossing the Spokane River and Hangman Creek, and the subcontract which I had from Caughren, Boynton & Company covered the same work, and included all of the foundations, piers, pedestals, abutments and retaining walls, being part of the construction of the roadbed of the defendant between the points which I have mentioned. The reason I know this is that I was taken out on the work by the assistant engineer of the defendant, under the direction and order of F. L. Pittman, chief engineer in charge of the work and he showed me the work and pointed out that it covered all of

(Testimony of J. L. Alverson.)

the work between Station 24 and Hangman Creek Bridge. Pittman also indicated upon the ground for me the places for depositing gravel most convenient to the work. I was informed by Mr. Pittman, chief engineer, that he could not tell exactly when the work would be ready to be done, but he said he would advise me. He said the [58] plans were not all completed yet, or gave some other reason which I disremember, but said I would be informed in due time and allowed to go ahead with my subcontract. Pittman knew I had a subcontract with Caughren, Boynton & Company, as we often talked the matter over, and he gave me instructions to bring my outfit over and locate it near the work, so as to be prepared to go ahead as soon as the company was ready.

The offices of the company and Mr. Pittman were in the Paulsen Building, Spokane, where this work was to be performed, crossing the Spokane River and extending to Hangman Creek Bridge. I brought my outfit over and located it on the ground, and from time to time received instructions from Mr. Pittman about locating my outfit along the work, and other instructions in regard to going ahead with the performance of the work which I have mentioned. I was present in the offices of the company and of Caughren, Boynton & Company before the arbitration agreement (Plaintiff's Exhibit 17) was signed, and my interests and rights were talked over at different times between all of the parties, and I was the only subcontractor under Caughren, Boyn-

(Testimony of J. L. Alverson.)

ton & Company at the time said arbitration agreement was signed or discussed, and the following clause, to wit: "In the event that the railroad company does not elect, within thirty days from the date hereof, to have the contractor complete the structures, the construction of which have not at this date been commenced, then and in that event the railroad company shall assume all obligations of the contractor to the party or parties holding subcontracts for the construction thereof," was inserted in said arbitration agreement for my benefit. I talked with Mr. Pittman frequently, after the arbitration agreement was signed, and he invariably informed me I was to have the work, and to go ahead with the work when they were ready to have it performed. They kept me waiting around for over a year, with my outfit, and I called numerous times, I cannot tell just how many, but every week [59] or so, I would inquire about when the work would be ready, and was always told by Mr. Pittman that they were getting ready as fast as possible, and I would be informed in due time, so I could go ahead with the work. I had plenty of means with which to finance myself in the performance of said work, and was ready, willing and able to do said work at all times, and to carry out said work according to my contract and according to the plans and specifications of the company and the original contract between the railroad company and Caughren, Boynton & Company. I waited around a number of

(Testimony of J. L. Alverson.)

months, and then I had some work up in Canada I could do, so I moved part of my outfit up there, but kept in communication with Mr. Pittman through my father-in-law, Mr. J. Z. Moore, and was ready to come down and go right to work on the contract, when I was informed that the work was ready. A number of months afterwards, Mr. Pittman was replaced as chief engineer in charge of the work by Mr. Holman, and the company, without consulting me, or making any arrangements with me, let the work to be done by contract to Twohy Brothers, and have never settled with me, or considered me at all in any manner, and have never done anything by way of carrying out the terms of the arbitration agreement, or carying out any obligations of the original contractor, Caughren, Boynton & Company, to me, but have wholly disregarded my contract and rights in the matter, and have paid me nothing and have made no adjustment of my claim whatever.

I was expecting to go to work to perform my contract for the company at all times, until I found out the contract had been relet to Twohy Brothers, and they went ahead and did the work through their subcontractors, Bates & Rogers Construction Company.

I have examined the plans and specifications and know the cost of all materials which I was required to furnish in order to perform the work, and considering what the work would have cost me to have performed, my profits on said work, if I had been

(Testimony of J. L. Alverson.)

permitted to carry out my contract, would have been $90,244,31, which included [60] the retaining walls, foundations, abutments piers and pedestals between Station 24 and Hangman Creek Bridge.

If the retaining walls are excluded, my profits would have been $78,145.08.

If the limits of the contract are to be considered as meaning from Monroe Street to the Hangman Creek Bridge and the retaining walls are included, my profits would have been $60,218.89, and if the retaining walls are excluded between these last two mentioned points, my profits would have been $48,119.66.

Mr. Pittman, chief engineer, knew at all times that I was waiting and ready at all times to perform my subcontract, and I had no notice of the intention on the part of the railroad company to deprive me of said work under my said contract, until the work had been relet to Twohy Brothers. Pittman assured me at all times, that I was to have the work, both before the arbitration agreement was signed and at all times afterwards, and I never at any time imposed conditions, or insisted that the company should do anything to permit me to perform my subcontract, and I would have started to work and performed the contract at any time I was notified to do so by the company, or whenever said work was ready to be performed, and I made all arrangements so to do.

I had performed other subcontracts, just the same as the contract in question, for the building of parts of this same railroad line between Spokane and

(Testimony of J. L. Alverson.)

Marshall Junction, under Caughren, Boynton & Company, and had never failed, neglected or refused, at any time, to perform this subcontract in question, according to its terms.

Cross-examination of Plaintiff by Mr. SPENCER.

Q. You went to Canada in 1912?

A. I think it was in June, 1912.

Q. In June, 1912; and did you take any of your outfit with you? **[61]**

A. Yes; we took what stuff we had here.

Q. And you had dissolved with Mr. Koeper when you went to Canada?

A. Oh, yes; dissolved six or eight months before that. Well, it was practically dissolved in September, 1911, after we had finished those culverts down there.

Q. Then, when you came back from Canada, that was in the fall of 1912? A. Yes, sir.

Q. Or, in the winter of 1913, after the first of the year, or do you remember?

A. Oh, we got back I think along the latter part of November, when we closed our work there, about the 10th of November, in Canada.

Q. Then, you saw Mr. Pittman several times, and finally you saw Mr. Holman?

A. I think I saw Mr. Holman, that is the spring of 1913, although I am not sure; I made so many trips over there that I can't say definitely.

Q. You didn't make many trips to see Mr. Holman, did you?

A. No, I saw him twice, I think.

(Testimony of J. L. Alverson.)

Q. You saw him at his office there with his assistant, Mr. Isaacs, in the spring of 1913, didn't you?

A. I think so.

Q. Now, at that time, didn't you discuss this contract with him, and say to him—that in substance—that the railroad company would have to finance you if you were going to do that job; that it was a big job, and they would have to furnish you the sand, gravel and cement?

A. No, sir; I had no such conversation at all.

Q. At any time with Holman?

A. Not along those lines about furnishing cement. Nothing [62] was ever said about cement.

Q. And nothing was said about gravel or sand?

A. Yes; I think that matter came up. That was our contract; they were to furnish sand and gravel all along the line.

Q. You had been furnished it?

A. Yes, that was in our contract, to be furnished sand and gravel.

Mr. PLUMMER.—Who furnished it?

A. The railroad company; it was furnished by either the railroad company or the general contractor. It cost us nothing.

Mr. SPENCER.—Q. And you insisted that was your right with respect to this work?

A. Yes, sir, under the arbitration agreement, which read that they would assume all the responsibility of the general contractor to us.

Q. I am not asking you what the arbitration agreement provides; but that was the substance of

(Testimony of J. L. Alverson.)

your conversation with Mr. Holman?

A. No, we talked the matter over, and I told him that we wanted to do the work according to the arbitration agreement.

Q. You didn't tell him that you wanted to do it according to the contract of Alverson & Koeper?

A. I said according to the arbitration agreement, which took care of us.

Q. Well, didn't you claim that under the arbitration agreement, and under this Alverson & Koeper contract, that the railroad company would have to furnish you sand, gravel and cement? A. No, sir.

Q. But you did tell him that they would have to furnish you the sand and gravel?

A. Yes; I said—

Q. And you did tell him, did you not, that as a condition [**63**] of your going on with the work that they would have to finance you?

A. I said we would expect to do the work under the terms of the arbitration agreement. He said, "What do you mean?" "Well," I said, "the general contractor financed me, and you are assuming his obligations; therefore, you would have to finance me. If we wanted machinery we bought through them, or if we wanted supplies, we bought through them."

Q. Then, you left, and how long was it before you saw him again?

A. I think it was the fall of 1913, or the winter of 1913, rather.

Q. How is that?

(Testimony of J. L. Alverson.)

A. About the middle of the winter some time.

Q. Well, this first talk you said was in the early spring of 1913, you said?

A. Yes, before I went north. Now, I think that is the date. Now, I am not positive about that.

Q. Then on another occasion you conferred with him, and you took the same position, did you not, that he would have to finance you and give you cement, or rather sand and gravel?

A. Yes, sir. Mr. Moore and I saw him—Lawson Moore and I say Mr. Holman, I think, in the winter of 1913.

Q. Who? A. Lawson Moore.

Q. Is that Judge Moore's son?

A. Yes, sir; associated with me in this work.

Q. What time was that?

A. That was in the winter of 1913, late winter.

Q. Was that after the first conference, or after—

A. No, this was afterwards.

Q. But the first conversation you say was in the late winter or very early spring of 1913? **[64]**

A. 1913, I think; and the next one was in the late fall of 1913. It might have been after Christmas or before Christmas, I don't remember the date exactly.

Q. Well, that was substantially to the same effect, wasn't it?

A. Mr. Moore and I were up there and made the same statement; that we expected—Mr. Holman said, "How do you figure that?" The conversation came around to the arbitration agreement, and

(Testimony of J. L. Alverson.)

said we figured we would be financed by the railroad company. But at that time the work was practically all done.

Q. This concrete work wasn't done until 1914? This concrete work wasn't let until 1913?

A. I don't know when it was let.

Q. You remember that in the summer it was let to Twohy Brothers?

A. It wasn't here at the time it was let.

Q. Where were you in 1913? A. Canada.

Q. When did you go back to Canada?

A. I went back the 10th of March, 1913.

Q. How long did you stay there?

A. I stayed there until about the 1st of December—about the 10th of December.

Q. And you had this talk with Mr. Holman before you went back to Canada on the 10th of March?

A. I think that was the time, yes, sir.

Q. Just about the time you left?

A. It probably was; still, I don't know just about that date, but I am pretty positive that was the time.

Q. Well, it couldn't be very far out of the way?

A. No.

Q. If you left on the 10th of March, 1913—you think that [65] is the date you went to Canada?

A. Yes, sir; I know that date.

Q. You had your outfit up there? A. Yes, sir.

Q. And how long did you stay there?

A. I got down from there about the 10th of December, I think; about that time, the first of December.

(Testimony of J. L. Alverson.)

Q. 1914? A. No, 1913.

Q. Oh, yes, 1913, sure. And then when you got back you found the work was well under way?

A. Yes, sir.

Q. But the work, however, west of—that is some of the concrete abutments here, Nettleton and Oak and some of these other abutments were not completed then, were they?

A. I don't remember whether they were or not. I know they commenced at the time I talked to Mr. Holman; all that stuff down there was practically done.

Q. Well, wasn't there two or three abutments down there, and didn't Holman tell you you could build those, and that you said you wouldn't build them unless he would finance you and furnish you the gravel and the sand?

A. No. He asked us how we would like to build Cedar St.; that was the one that was left. He said they had one left. I told him all right, I would like to build it. He said, "When can you start?" I said, "Any time." Mr. Moore—I don't know how this thing came up about this arbitration agreement again, but we said we would expect to build it under the terms of the arbitration agreement. He said, "You mean by that we are to finance you?" And I don't know whether he mentioned sand and gravel or not, and I told him yes. **[66]**

Q. Well, that is what you understood that those three elements were in controversy there?

A. Sand and gravel and financing. Yes, sir.

(Testimony of J. L. Alverson.)

Q. What work were you doing in Canada with your outfit up there?

A. We had some reinforced concrete work and we had some grading.

Q. By "we" whom do you mean?

A. Mr. Moore and I; Lawson Moore.

Q. Well, was he interested in this? When this contract here was turned over to you again, was he interested in that? A. Yes.

Redirect Examination by Mr. PLUMMER.

Q. When you took this outfit up into Canada that you had previously placed on this ground preparatory to doing this work in controversy at the request or direction of Mr. Pittman, state whether or not you still had an outfit down here that you could use for that purpose? A. Yes, sir.

Q. To perform this work so that you wouldn't have to come back from Canada with your outfit?

A. There was lots of concrete outfits here in town at that time that we could have gotten on a day's notice; outfits stored all around.

Q. And in case he gave you directions to go ahead with this work, you intended to get this outfit—

Mr. SPENCER.—We object.

Mr. PLUMMER.—Just state what you proposed to do this work with in case you were called upon to do the work while your outfit was in Canada.

A. Get an outfit here.

Mr. PLUMMER.—Q. Was it necessary at all in order for you [67] to perform this contract that is in controversy here that you should be financed

(Testimony of J. L. Alverson.)

by the railroad company in order to permit of your doing it?

Mr. SPENCER.—That is quite immaterial, if the Court pleases.

Mr. PLUMMER.—No, they brought that out, that he wanted to be financed.

Mr. SPENCER.—He says that is a condition he imposed. I don't care whether it was necessary or not. He said on those two occasions he told Mr. Holman that under the arbitration agreement he expected to be furnished with sand and gravel.

Mr. PLUMMER.—He didn't say it was a condition precedent to it.

The COURT.—That is for the jury.

Mr. PLUMMER.—Will you answer the question?

A. No.

The COURT.—That will go to his ability to perform it; that is all.

Mr. SPENCER.—Does the Court permit the testimony as to whether it was necessary for him to be financed?

The COURT.—The question is whether he was able to perform the contract without being financed. I will permit him to answer that question.

Mr. SPENCER.—Note an exception.

A. Yes, sir.

Mr. PLUMMER.—As a matter of fact, Mr. Alverson, the contract itself provides for the payment of ninety per cent upon estimates furnished each thirty days.

Mr. SPENCER.—That shows for itself.

(Testimony of J. L. Alverson.)

The COURT.—The contract speaks for itself, Mr. Plummer.

Mr. PLUMMER.—All right. That is right. I will ask you what financing would be necessary to enable you to go ahead with this work? How much money would it take? **[68]**

Mr. SPENCER.—That is objected to as immaterial.

The COURT.—That goes to his ability to perform the contract.

Mr. SPENCER.—Exception.

A. It wouldn't have taken a large amount of money to start the work. You see the contract provides estimates of ninety per cent of the amount of the work you have done each month, and that is coming back, ninety per cent of it.

Mr. PLUMMER.—State whether or not you could have raised money sufficient to go ahead with the work, and was ready to do it at any and all times under your contract?

A. Yes, sir.

Mr. SPENCER.—Objected to as immaterial and irrelevant and note an exception.

Recross-examination by Mr. SPENCER.

Q. You want to be understood as telling this jury here that you could go down here and build these structures in this Spokane River, assemble the outfit to do it, build the forms and the towers, place the derricks that are necessary and do all the bracing that is required in sinking those pits over there where these piers are by the pen stocks of the power

(Testimony of J. L. Alverson.)

company, and that you can carry out an enterprise of that magnitude and in that location, and do it without capital and without an outfit?

A. I don't mean that at all, sir.

Q. You mean to say that you would assemble an outfit over night, or get an outfit over night to do it?

A. I don't say that.

Q. You don't wish to be understood that way?

A. Absolutely not.

Q. Do you say that you could do it without capital? A. No, sir.

Q. It would require a very substantial amount of money to do it? **[69]**

A. It would require money to do it, yes.

Q. I think that is all.

Mr. PLUMMER.—I believe you said yesterday that you told Mr. Holman that Coughren, Boynton & Company had agreed to finance you, provided you called upon them to do so. Did you make that statement to him?

A. Yes, sir; I told him we had been financed by them on some of the work; and on some of the work, we had not been.

Q. What arrangements or agreements had Caughren, Boynton & Company made with you with reference to financing you should you call upon them to do so?

Mr. SPENCER.—I object to that, Your Honor, as immaterial. They have pleaded a contract here, and say that we assumed it.

Mr. PLUMMER.—We don't say that you as-

(Testimony of J. L. Alverson.)

sumed that altogether. We say that you assumed all obligations to the subcontractor. Now, if there is an obligation existing between Caughren, Boynton & Company themselves and the subcontractors with reference to financing, that is one obligation, the same as any other obligation of the contract. It may be oral, but it is an obligation just the same.

The COURT.—The written contract provides just what they shall do.

Mr. PLUMMER.—Yes, but independent of that there could be another contract, which don't conflict with the provision for financing them.

The COURT.—If it was entered into subsequently, and upon a new consideration, it might be held to be a contract.

Mr. SPENCER.—They have pleaded this written contract, Your Honor, and brought the issue in here on the written contract.

Mr. PLUMMER.—You say in your arbitration agreement that you are to assume all obligations. You don't confine it to the contract between Caughren, Boynton & Company and Alverson.

The COURT.—There is no claim here that there is any [70] agreement between the plaintiff and Caughren, Boynton & Company, other than the contract set forth, as I read the pleadings.

Mr. PLUMMER.—No; there is no special contract pleaded. This other contract is simply pleaded by way of recital, showing his right to do the work, and his right to the profits in it.

The COURT.—The only obligations you impose

(Testimony of J. L. Alverson.)

on the defendant by these pleadings is this written contract, which you allege was assumed by them.

Mr. PLUMMER.—All right.

The COURT.—I will sustain the objection.

Mr. PLUMMER.—The sand and gravel that you were to use on this job that we speak of, where was that to come from? Where were you going to get them?

A. They were to be furnished.

Q. Who by?

A. By either the railroad company, or the general contractor.

Mr. PLUMMER.—Now, Mr. Alverson, I will ask you if you have gone over these maps, specifications and other data that has been offered in evidence here to ascertain what would have been the cost of your doing this work in controversy, and also what would have been your profit on the work if you had been allowed to do it? Have you gone over these details with the engineers? A. Yes, sir.

[Testimony of James Z. Moore, for Plaintiff.]

JAMES Z. MOORE, produced on the part of the plaintiff, being first duly sworn, testified as follows:

I am the father-in-law of the plaintiff, J. L. Alverson. When Alverson went to Canada to do some work there, he instructed me to confer frequently with Mr. Pittman, the chief engineer of the defendant, as to when the work, which is the subject matter of this controversy, would be ready to be performed by Alverson under his contract, and that

(Testimony of James Z. Moore.)

immediately upon receiving notice, he would come [71] down and go ahead with the contract. In pursuance with said request on the part of Alverson, I called frequently at the offices of the company and conferred with Mr. Pittman, the chief engineer. Mr. Pittman informed me at all times that Alverson was to go ahead with the work when they were ready; that he could not tell just when the work would be ready, but that he would let me know so I could inform Alverson. I made these visits to Mr. Pittman and conferred with him every few days during all of the time Alverson was in Canada.

Alverson was ready, willing and able to perform said work at any and all times, and had made preparations to commence work as soon as notified by the company that said work was ready. I kept in correspondence with Alverson, informing him what Mr. Pittman had told me upon the subject.

The plaintiff introduced testimony of engineers Kennedy and Tannatt, who testified that they had gone over the plans and specifications of the work, and corroborated plaintiff, Alverson, as to his profits, had he been allowed to do the work.

The defendant thereafter introduced evidence which tended to dispute the evidence of the plaintiff and his witness, as to any loss of profits, which witnesses for defendant testified in substance that if Alverson had been permitted to do such work, when he was done, he would have sustained a loss of his contract, rather than a profit. The defendant introduced testimony tending to show that said

engineer Pittman retired from the control of the Spokane Terminal work of the defendant company, with the close of the year 1912, and that he had no jurisdiction or authority over said work, including the work in controversy after January 1, 1913, and the defendant also introduced evidence tending to show that on and after January 1, 1913, J. R. Holman, referred to by the plaintiff in his testimony, was in exclusive charge of said Spokane Terminal work [72] of the defendant, including the work in controversy in this case, as Chief Engineer of the defendant, and the defendant introduced upon said trial further evidence tending to show that the work in controversy in this action was undertaken and commenced by Bates & Rogers in the month of July, 1913.

Thereafter, the Court instructed the jury, and among others, gave the following instructions

Instructions of the Court.

The plaintiff in this case is limited to the terms and provisions of the contract attached to the complaint as exhibit "A," and the terms and provisions of said contract are not to be modified, added to or detracted from by reference to any other contract or exhibit introduced in this cause. I mention this for the reason that a contract between the defendant and Caughren, Boynton & Company has been received in evidence to asisst in determining the subject matter and limits of the work contemplated in the Alverson—Koeper contract, exhibit "A"; that said Caughren, Boynton & Company contract with the railroad company was received for no other

purpose, and its terms and provisions should not be considered by you except as instructed by the Court.

Referring to the work called for by the so-called subcontract, a copy of which is attached to the complaint as exhibit "A," it is admitted by both parties to this cause that defendant offered to have the work covered by said subcontract done by the plaintiff in accordance with the said subcontract; and in this connection the defendant contends that in the spring of 1913, the plaintiff had a conference with Mr. J. R. Holman, chief engineer of the defendant, and representing the defendant in this case, and that in discussing said work and said subcontract the plaintiff imposed upon the defendant the requirements to furnish sand and gravel without cost to the plaintiff to be used upon the work, and that the defendant would also be required to finance the plaintiff in the work. I [73] charge you in this connection, that the contract, exhibit "A," under which the plaintiff claims in this case, does not require the railroad company to furnish sand without cost to the plaintiff, and if you find from the evidence that the plaintiff imposed that condition upon the defendant, then the plaintiff in effect breached and abandoned the contract, and under such circumstances you should find for the defendant.

If you find that the plaintiff imposed and demanded as a condition for the prosecution and performance of the work that the defendant furnish gravel without cost to the plaintiff upon the work to be done under the contract exhibit "A," then you should find for the defendant.

If you find that the plaintiff required and demanded as a condition for the prosecution and performance of the contract that the railroad company finance the plaintiff, then I charge you that in making such demand and imposing such condition, if you find that the same was made by the plaintiff, the contract became thereby abandoned and breached by the plaintiff, and the defendant was excused from the performance of the said contract by it, and your verdict should be for the defendant.

The contract is somewhat indefinite as to its eastern limits. One party contends that the contract extends only to the Monroe Street Bridge across the Spokane River. The other side contends that it extends to Station 24, at or near the vicinity of Post Street, east of the Spokane River. In other words, Gentlemen of the Jury, the plaintiff contends that his contract covered the piers and other construction work north of the Spokane River, and east of the Monroe Street Bridge. The defendant contends that it did not cover or include this work. That will be one of the questions you will be called upon to determine. If you find from the preponderance of the evidence that the contract did extend to and include the work beyond, or on the east side of the Monroe Bridge, [74] you will take that work into consideration in assessing the amount of recovery. And if, on the other hand, you are not satisfied by the preponderance of the evidence that that work was included in plaintiff's contract you will exclude that part of the work from your consideration entirely in your deliberations.

[Proposed Amendment No. 16.]

Proposed Amendment No. 16: Insert immediately following the word "deliberations" appearing in fourth line on page 20 of the proposed Bill of Exceptions, these words, to wit: "Associated with the foregoing instructions and with other instructions given by the Court, the Court submitted to the jury four special findings bearing upon the question of the extent of work and limits of same as covered by the contract sued upon, and said special findings were submitted to the jury over the objection of the defendant, but with the positive consent and acquiescence of the plaintiff's attorneys made prior to the giving of said instructions, and plaintiff's attorneys then and there consented and acquiesced in submitting to the jury the questions involved in said foregoing instruction, and the said special findings, and the explanations of the court given to the jury with respect to same were and are as follows:

No. 1. Did the construction work covered by the plaintiff's contract extend to Station No. 24, or did it end at the Monroe Street Bridge?

You will answer that question by inserting the words, 'To station No. 24,' or 'To Monroe Street Bridge.'

The 2d interrogatory is as follows: If you find that the plaintiff's contract extended to and included construction work east of the Monroe Street Bridge, and that such contract was breached by the defendant, how much, if any, damage do you assess for the breach of that part of the contract covering the work east of the Monroe Street Bridge?

Of course, gentlemen, if you find that the work did not extend beyond the Monroe Street Bridge you do not have to answer that interrogatory at all. But if you find that it did extend beyond the Monroe Street Bridge you will have to answer in it the damages which would result from the breach of that part of the contract.

The third interrogatory is: Did the plaintiff's contract extend to and include the two retaining walls between government Lots 3 and 4, and the retaining wall known as the Summit Boulevard retaining wall? **[75]**

You will answer that question 'Yes' or 'No.' If you answer it 'No' you will not be called upon to answer the 4th interrogatory that relates to the measure of damages for the breach of that part of the contract. If, however, you find that the contract did extend to and include those retaining walls you will have to answer the 4th interrogatory, which reads as follows:

If you find that the plaintiff's contract extended to and included these three retaining walls, and such contract was breached by the defendant, how much, if any, damage do you assess or allow for the breach of the contract relating exclusively to those three retaining walls?

Mr. SPENCER.—I would ask Your Honor to instruct the jury that in the event they find that the plaintiff exacted the requirement for the furnishing sand and gravel without cost to the plaintiff, or that he exacted the condition of financing, as instructed by Your Honor, then in either of such contingencies

they are not required to find upon the special findings which Your Honor has submitted.

The COURT.—Oh, yes; if their verdict goes for the defendant the special interrogatories are eliminated from the case."

After concluding the charge to the jury, the Court, in the presence of the jury and before the jury retired, inquired of counsel for both parties as follows:

The COURT.—Anything further, gentlemen?

To which Mr. Plummer, of counsel for the plaintiff, then and there answered:

Mr. PLUMMER.—I don't think of anything, Your Honor.

Whereupon counsel for the defendant then and there in the presence of the jury and before the jury retired, reserved and took exceptions to certain instructions given by the Court, and to the refusal of the Court to submit to the jury certain instructions requested by defendant. But no exceptions to the charge of the Court were taken by plaintiff before the jury retired or at any other time, excepting those taken after the return of the verdict, pursuant to the stipulation hereinafter set forth.

The jury retired to deliberate upon its verdict in this cause on the 22d day of April, 1915, and returned its verdict into court in favor of the defendant on the 23d day of April, 1915, and said verdict was then and there received by the Court, and thereafter and on the 1st day of May, 1915, the parties entered into and [76] filed with the clerk of the court in this cause the following stipulation:

"It is hereby stipulated and agreed by the parties hereto, by their respective counsel, that plaintiff may have thirty days in which to take and file exceptions to the Court's instructions, and for the preparation and service of a bill of exceptions in the above-entitled case."

And thereafter, pursuant to said stipulation, on the 20th day of May, 1915, the plaintiff, by his attorney, took exceptions to, and filed with the clerk of this court exceptions to the instructions of the Court, which exceptions were and are as follows:

Exceptions to Instructions to the Jury.

"In the District Court of the United States for the Eastern District of Washington, Northern Division.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Comes now the above-named plaintiff, and under and by virtue of the stipulation heretofore signed by the parties hereto, and under the law, herewith files, states and presents his exceptions to the instructions given by the Court to the jury in the above-entitled cause.

I.

Plaintiff excepts to that part of instruction #2 which reads as follows: 'I mention this for the reason that a contract between the defendant and

Caughren, Boynton & Company has been received in evidence to assist in determining the subject matter and limits of the work contemplated in the Alverson-Koeper Contract, exhibit "A"; that said Caughren, Boynton & Company contract with the railroad company received for no other purpose, and its terms and provisions are not to be considered by you except as instructed by the Court.'

II.

Plaintiff excepts to so much of instruction #2, as given by the Court, which read as follows: 'I charge you in this connection that the contract exhibit "A," under which plaintiff claims in this cause, does not require the railroad company to furnish sand without cost to plaintiff, and if you find from the evidence that the plaintiff imposed that condition upon the defendant, then the plaintiff in effect breached and abandoned the contract, and under such circumstances you should find for the defendant.'

III.

Plaintiff excepts to the following instructions, given as part of instruction #2, which was as follows: 'If you find that the plaintiff imposed and demanded, as a condition for the performance [77] of the work, that the defendant furnish gravel without cost to the plaintiff upon the work to be done under the contract exhibit "A," then you should find for the defendant.

IV.

Plaintiff excepts to the following instructions, given as part of instruction #2, which reads as follows: 'If you find that the plaintiff required and de-

manded as a condition for the prosecution and performance of the contract that the Railroad Company finance the plaintiff, then I charge you, in making such demand and imposing such condition, if you find the same was made by the plaintiff, then contract became thereby abandaned and breached by the plaintiff, and defendant was excused from the performance of the said contract by it, and your verdict should be for the defendant.'

V.

Plaintiff excepts to that part of instruction #3 given by the Court, which reads as follows: 'The contract is somewhat indefinite as to its eastern limits. One party contends that the contract extends only to the Monroe Street Bridge crossing the Spokane River. The other side contends that it extends to station No. 24, at or in the vicinity of Post Street, east of the Spokane River. In other words, Gentlemen of the Jury, the plaintiff contends that his contract covered the piers and other construction work north of the Spokane River, and east of the Monroe Street Bridge. The defendant contends that it did not cover or include this work. That will be one of the questions you are called upon to determine. If you find from the preponderance of the testimony that the contract did extend to and include the work beyond, or on the east side of the Monroe Street Bridge, you will take that work into consideration in assessing the amount of recovery. And if, on the other hand, you are not satisfied by the preponderance of the testimony that that work was included in plaintiff's contract you will exclude that part of the work from your con-

sideration entirely in your deliberations.'

VI.

Plaintiff excepts to that part of the last instruction given by the Court, which reads as follows: 'Mr. SPENCER.—I would ask your Honor to instruct the jury that in the event they find that the plaintiff exacted the requirements for the furnishing of sand and gravel without cost to the plaintiff, or that he exacted the condition of financing, as instructed by your Honor, then in either of said contingencies, they are not required to find upon the special findings which your Honor has submitted. The COURT.—Oh, yes.' ''

Thereafter and after the return of the verdict the plaintiff moved for an order granting a new trial, which motion was argued by counsel and considered by the Court, and thereafter an order was made and entered by the Court denying a new trial, whereupon a final judgment was entered upon the verdict, in favor of the defendant and against the plaintiff, dismissing the cause and awarding costs to the defendant. [78]

Defendant moved to strike plaintiff's proposed bill of exceptions, which motion was overruled by the Court in view of the law and facts of the case and the stipulation of the parties hereinbefore set out, and all of plaintiff's exceptions are allowed by the Court.

[Certificate to Bill of Exceptions.]

United States of America,
Eastern District of Washington,—ss.

I, Frank H. Rudkin, Judge of the United States

District Court for the Eastern District of Washington, Northern Division, and the Judge before whom the above-entitled cause was tried, to wit, J. L. Alverson, plaintiff, vs. Oregon-Washington Railroad & Navigation Company, a corporation, defendant, which is number 2023 in said court, do hereby certify that within the time provided by law, the order of this Court and the stipulation of the parties, said plaintiff served upon the defendant and lodged and exhibited herein his proposed bill of exceptions, and thereafter and within the time provided by law and the order of this Court, the defendant filed, lodged and exhibited herein its proposed amendments to said proposed bill of exceptions.

Now, therefore, this cause having come regularly on at this time for hearing before the Court, on plaintiff's application for the settling and certifying of his said proposed bill of exceptions, and having heard and considered same and being fully advised in the premises, I do hereby further certify that the matters and proceedings embraced in the foregoing bill of exceptions, are matters and proceedings occurring in said cause and that said bill of exceptions contains all the material facts, matters and proceedings heretofore occurring in said cause not already a part of the record therein, and said bill of exceptions is hereby approved, [79] allowed and settled, as and for the true, full and correct bill of exceptions in said cause, and contains, in connection with the exhibits referred to therein, which will be sent up by special order of the Court hereafter to be made, all the evidence and proceedings had and

taken at the trial thereof and subsequent thereto, concerning the points of law and fact touched upon or referred to therein, and the same as so settled and allowed is here and now certified accordingly by me, and it is further ordered that this bill of exceptions so certified, be filed herein by the clerk.

The foregoing bill of exceptions, full, true and correct in all respects, is hereby approved, allowed and settled and made a part of the record herein.

Done in open court this 19th day of November, 1915.

(Signed) FRANK H. RUDKIN,
Judge.

[Endorsements]: Bill of Exceptions. Filed in the U. S. District Court for the Eastern District of Washington. November 19, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. **[80]**

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,
Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,
Defendant.

Assignment of Errors.

And now comes J. L. Alverson, plaintiff in the above entitled cause, and makes and files this his as-

signment of errors, upon which he will rely in the prosecution of the writ of error in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit.

I.

The Court erred in giving the following quoted portion of instruction number two, wherein the jury was instructed that should it find from the evidence that the plaintiff demanded that the defendant furnish sand without cost to plaintiff, that then the plaintiff in effect breached and abandoned his contract and that the verdict should be for the defendant; said instruction reading as follows:

> "I charge you in this connection that the contract exhibit 'A' under which plaintiff claims in this case, does not require the railroad company to furnish sand without cost to plaintiff, and if you find from the evidence, that the plaintiff imposed that condition upon the defendant, then the plaintiff in effect breached and abandoned the contract, and under such circumstances you should find for the defendant."

II.

The Court erred in giving the following quoted portion of instruction number two, wherein the jury was instructed that should it find from the evidence that the plaintiff imposed and demanded as a condition for the performance of the work, that the defendant furnish gravel without cost to plaintiff, then the verdict should [81] be for the defendant; said instruction reading as follows:

"If you find that the plaintiff imposed and de-

manded, as a condition for the performance of the work, that the defendant furnish gravel without cost to the plaintiff upon the work to be done under the contract exhibit 'A,' then you should find for the defendant."

III.

The Court erred in giving the following quoted portion of instruction number two, wherein the jury was instructed that should it find from the evidence that plaintiff required and demanded, as a condition for the prosecution and performance of its contract, that the railroad company finance the plaintiff, the plaintiff, by making such demand and imposing such condition, abandoned and breached his contract and that thereby excusing defendant from the performance of its contract, then the verdict should be for the defendant; said instruction reading as follows:

"If you find that the plaintiff required and demanded as a condition for the prosecution and performance of the contract that the railroad company finance the plaintiff, then I charge you, in making such demand and imposing such condition, if you find the same was made by the plaintiff, then contract became thereby abandoned and breached by the plaintiff, and defendant was excused from the performance of the said contract by it, and your verdict should be for the defendant."

IV.

The Court erred in assenting to and thereby in effect giving to the jury the following instruction requested by counsel for the defendant, to wit:

"I would ask your Honor to instruct the jury that in the event they find that the plaintiff exacted the requirements for the furnishings of sand and gravel without cost to the plaintiff, or that he exacted the condition of financing, as instructed by your Honor, then in either of said contingencies, they are not required to find upon the special findings which your Honor has submitted."

V.

The Court erred in allowing the verdict rendered by the jury to stand.

VI.

The Court erred in denying plaintiff's motion for a new trial. [82]

VII.

The Court erred in entering final judgment on the verdict in favor of the defendant and against the plaintiff, and awarding costs to the defendant.

In order that the foregoing assignments may be and appear of record, the plaintiff presents the same to the Court and prays that the Court may consider in connection therewith the evidence adduced herein, and that said judgment of the lower court be reversed.

(Signed) PLUMMER & LAVIN and
O. C. MOORE,
Atttorneys for Plainiff.

[Endorsements]: Assignment of Errors. Filed in the U. S. District Court for the Eastern District of Washington, November 19th, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [83]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Petition for Writ of Error.

Comes now the above-named plaintiff by his attorneys and complains that in the record and proceedings had in said cause, in the instructions of the Court to the jury, in the order of the Court denying plaintiff's motion for a new trial and in the rendition and entry of the final judgment made and entered herein, on the 21st day of June, 1915, in favor of the defendant and against plaintiff, dismissing said cause and awarding costs to defendant, manifest error hath happened to the great damage of this plaintiff;

Your petitioner further respectfully shows that he has this day filed herewith his assignments of error committed by the Court below in said cause and intended to be urged by your petitioner, plaintiff in error herein, in prosecution of this, his suit in error.

WHEREFORE, said plaintiff prays for the allowance of a writ of error to the said Circuit Court of Appeals and for an order fixing the amount of bond, and for such other orders and process as may

be necessary to cause the same to be corrected by the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

(Signed) PLUMMER & LAVIN and
O. C. MOORE,
Attorneys for Plaintiff.

[Endorsements]: Petition for Writ of Error. Filed in the U. S. District Court for the Eastern District of Washington, November 19, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [84]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Order Allowing Writ of Error.

J. L. Alverson, having filed his petition for a writ of error from the judgment of the Court entered herein on the verdict of the jury on the 21st day of June, 1915, in favor of defendant and against the plaintiff, dismissing said cause and awarding costs to defendant, also prays that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, for this plaintiff, to the United States Circuit Court of Appeals

for the Ninth Judicial Circuit, having likewise filed and exhibited an Assignment of Errors on which he relies for a reversal;

Now, therefore, it is ORDERED, that a writ of error be and hereby is allowed in order that a review may be had in the United States Circuit Court of Appeals for the Ninth Judicial Circuit, of the final judgment heretofore entered herein on the 21st day of June, 1915, and on all proceedings in said cause, and it is further ordered that said plaintiff furnish bond conditioned as required by law to the satisfaction of the court, in the sum of one hundred dollars.

Dated this 19th day of November, 1915.

(Signed) FRANK H. RUDKIN,
Judge.

[Endorsements]: Order Allowing Writ of Error. Filed in the U. S. District Court for the Eastern District of Washington, November 19, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [85]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,
Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,
Defendant.

Writ of Error [Copy].

United States of America,
Eastern District of Washington,
Northern Division,—ss.

The President of the United States, to the Honorable, the Judge of the District Court of the United States for the Eastern District of Washington, Northern Division:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, between J. L. Alverson, plaintiff in error, and the Oregon-Washington Railroad & Navigation Company, a corporation defendant in error, a manifest error hath happened, to the great damage of said J. L. Alverson, as by his complaint appears;

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 19th day of December, next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and

according [86] to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, the 19th day of November, in the year of our Lord one thousand nine hundred and fifteen.

[Seal] (Signed) W. H. HARE,
Clerk of the United States District Court for the Eastern District of Washington, Northern Division.

Allowed by:

(Signed) FRANK H. RUDKIN,
District Judge.

[Endorsements]: Writ of Error. Filed in the U. S. District Court for the Eastern District of Washington, November 19, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [87]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: That we, J. L. Alverson as principal, and Stella

Lombard as surety, are held and firmly bound unto the Oregon-Washington Railroad & Navigation Company, a corporation, in the sum of one hundred dollars ($100), for the payment of which well and truly to be made, we bind ourselves and each of us and our and each of our heirs, executors and administrators, jointly, severally and firmly by these presents.

Signed, sealed and dated this 19th day of November, A. D. 1915.

The conditions of the above obligation are such that whereas on the 21st day of June, A. D. 1915, an order and judgment was made and entered by the Court in the above-entitled cause in favor of the defendant and against the plaintiff, allowing said defendant its costs in said action, and the said plaintiff has obtained from said Court a writ of error to reverse said judgment in the aforesaid action and a citation directed to the said above-named defendant, citing and admonishing it to appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco in the State of California, and for that purpose he has been required by order of Court to give and furnish security in the sum of one hundred dollars ($1.00);

Now, therefore, if the said J. L. Alverson shall prosecute his said writ of error to effect and answer all costs, if he shall [88] fail to make his plea good, then this obligation shall be null and void;

otherwise to remain in full force and effect.

(Signed) J. L. ALVERSON,
Principal.
STELLA LOMBARD,
Surety.

State of Washington,
County of Spokane,—ss.

Stella Lombard, being first duly sworn, on oath deposes and says: That she is a resident of the State of Washington and is worth the sum of one hundred dollars ($100) over and above all debts and liabilities, in property within the State of Washington, exclusive of property exempt from execution.

(Signed) STELLA LOMBARD,

Subscribed and sworn to before me this 19th day of November, A. D. 1915.

[Seal] (Signed) JOSEPH J. LAVIN,
Notary Public in and for the State of Washington,
Residing at Spokane.

Approved November 19, 1915.

(Signed) FRANK H. RUDKIN,
Judge.

[Endorsements]: Bond on Writ of Error. Filed in the U. S. District Court for the Eastern District of Washington, November 19, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [89]

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Citation [Copy].

United States of America,
Eastern District of Washington,—ss.

The President of the United States, to the Oregon-Washington Railroad & Navigation Company, a Corporation, and to A. C. Spencer and Hamblen & Gilbert, your Attorneys, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty (30) days from the date of this citation, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Eastern District of Washington, Northern Division, wherein J. L. Alverson is plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment and other proceedings had in said cause in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 19th day of November, 1915, and of the Independence, of the United States the one hundred and fortieth.

[Seal] (Signed) FRANK H. RUDKIN,
United States District Judge.

Attest: (Signed)
W. H. HARE,
Clerk. [90]

[Endorsements]: Citation. Service of the Within Citation and Receipt of a Copy Thereof Admitted this 19th day of November, A. D. 1915. (Signed) A. C. Spencer and Hamblen & Gilbert, Attorneys for Defendant. Filed in the U. S. District Court for the Eastern District of Washington, November 19, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [91]

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,
Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,
Defendant.

Praecipe [for Transcript of Record].

To W. H. Hare, Clerk of said Court:

You are hereby requested to prepare and certify,

as provided by law, a transcript of the record in the above-entitled case to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit under the Writ of Error heretofore issued in said cause, and you will please include in said transcript the following proceedings, pleadings, papers, records and files, to wit:

Complaint;

Amended Answer;

Reply to Amended Answer;

Verdict of Jury;

Motion for New Trial;

Stipulation Extending Time for Filing Exceptions to Instructions;

Judgment for Defendant on Verdict;

Order Extending Time for Filing Proposed Bill of Exceptions;

Order Removing Cause from State to Federal Court;

Order Dismissing Certain Parties Defendant;

Order Extending Time for Filing Amendments to Proposed Bill of Exceptions;

Bill of Exceptions;

Assignment of Errors;

Petition for Writ of Error;

Order Allowing Writ of Error;

Writ of Error;

Bond on Writ of Error;

Citation;

Praecipe;

Order Denying New Trial;

—together with any and all other records entries,

pleadings, proceedings, papers and files necessary or proper to make a complete record [92] upon said Writ of Error under the Assignment of Errors filed herein, said transcript to be prepared as required by law and the rules of this court and the rules of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

(Signed) PLUMMER & LAVIN and
O. C. MOORE,
Attorneys for Plaintiff.

[Endorsements]: Praecipe for Transcript of Record. Filed in the U. S. District Court for the Eastern District of Washington, November 19, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [93]

[Certificate of Clerk U. S. District Court to Transcript of Record.]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,
Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,
Defendant.

United States of America,
Eastern District of Washington,—ss.

I, W. H. Hare, Clerk of the District Court of the

United States in and for the Eastern District of Washington, do hereby certify that the foregoing typewritten pages constitute and are a full, true, correct and complete copy of so much of the record, pleadings, orders and other proceedings had in said action, as the same remain of record and on file in the office of the clerk of the said District Court, as called for by the plaintiff and plaintiff in error in his praecipe; and that the same constitute the record on writ of error from the judgment of the District Court of the United States in and for the Eastern District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California, which writ of error was lodged and filed in my office on November 19th, 1915.

I further certify that I hereto attach and herewith transmit the original writ of error and the original citation issued in this cause.

I further certify that the fees of the clerk of this court for preparing and certifying to the foregoing typewritten record amount to the sum of thirty-six dollars and twenty cents ($36.20), and that the same has been paid in full by Plummer & [94] Lavin, attorneys for the plaintiff and plaintiff in error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Spokane, in said District, this 2d day of December, 1915.

[Seal] W. H. HARE,
Clerk. [95]

[Endorsed]: No. 2703. United States Circuit Court of Appeals for the Ninth Circuit. J. L. Alverson, Plaintiff in Error, vs. Oregon-Washington Railroad & Navigation Company, a Corporation, Defendant in Error. Transcript of Record Upon Writ of Error to the United States District Court of the Eastern District of Washington, Northern Division.

Received December 6, 1915.

F. D. MONCKTON,
Clerk.

Filed December 10, 1915.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk. [96]

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Writ of Error [Original].

United States of America,
Eastern District of Washington,
Northern Division,—ss.

The President of the United States, to the Honorable, the Judge of the District Court of the United States, for the Eastern District of Washington, Northern Division:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, between J. L. Alverson, plaintiff in error, and the Oregon-Washington Railroad & Navigation Company, a corporation, defendant in error, a manifest error hath happened, to the great damage of said J. L. Alverson, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 19th day of December next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, [97] the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of

right, and according to the laws and customs of the United States should be done.

Witness, the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, the 19 day of November, in the year of our Lord one thousand nine hundred and fifteen.

W. H. HARE,

Clerk of the United States District Court for the Eastern District of Washington, Northern Division.

Allowed by:

[Seal] FRANK H. RUDKIN,

District Judge.

[Endorsed]: No. 2023. J. L. Alverson, Plaintiff, v. Oregon-Washington Railroad & Navigation Company, a Corporation, Defendant. Writ of Error. Filed in the U. S. District Court, Eastern District of Washington. Nov. 19, 1915. Wm. H. Hare, Clerk. S. M. Russell, Deputy.

No. 2703. United States Circuit Court of Appeals, for the Ninth Circuit. Original Writ of Error. Filed Dec. 10, 1915. F. D. Monckton, Clerk.

In the District Court of the United States, Eastern District of Washington, Northern Division.

No. 2023.

J. L. ALVERSON,

Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

Defendant.

Citation [on Writ of Error (Original)].

United States of America,
Eastern District of Washington,—ss.

The President of the United States to the Oregon-Washington Railroad & Navigation Company, a Corporation and to A. C. Spencer and Hamblen & Gilbert, your Attorneys, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty (30) days from the date of this citation, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Eastern District of Washington, Northern Division, wherein J. L. Alverson is plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment and other proceedings had in said cause in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 19th day of November, 1915, and of the Independence of the United States the one hundred and fortieth.

[Seal] FRANK H. RUDKIN,
United States District Judge.

Attest: W. H. HARE,
Clerk. [98]

[Endorsed]: No. 2023. J. L. Alverson, Plaintiff, vs. Oregon-Washington Railroad & Navigation Company, a Corporation, Defendant. Citation. Filed in the U. S. District Court, Eastern District of Washington. Nov. 19, 1915. Wm. H. Hare, Clerk. S. M. Russell, Deputy.

Service of the within Citation and receipt of a copy thereof admitted this 19th day of November, A. D. 1915.

A. C. SPENCER,
HAMBLEN & GILBERT,
Attorneys for Defendant.

No. 2703. United States Circuit Court of Appeals, for the Ninth Circuit. Original Citation on Writ of Error. Filed Dec. 10, 1915. F. D. Monckton, Clerk.